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LAW MAGAZINE AND REVIEW;

A Quarterly Review of Jurisprudence,

AND

Quarterly Digest of all Reported Cases,
1880-1881.

T. P. TASWELL-LANGMEAD, B.C.L., *Editor*.

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Quarterly Digest
OF
ALL REPORTED CASES,
IN THE
LAW REPORTS, LAW JOURNAL REPORTS, LAW TIMES
REPORTS, AND WEEKLY REPORTER,
WITH
COLLECTIVE TABLE OF CASES AND INDEX OF SUBJECTS.
VOLUME VI.
AUGUST 1880—AUGUST 1881.

BY
HENRY M. KEARY,
Of Lincoln's Inn, Esq., Barrister-at-Law.

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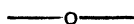
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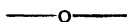
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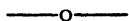
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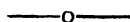
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THE LAW MAGAZINE AND REVIEW.

No. CCXXXIX.—FEBRUARY, 1881.

I.—CROWN PROSECUTIONS: RIGHT OF REPLY.

WRITERS on the practice of the Criminal Law and on the Law of Evidence, as administered in England, inform us that in the case of public prosecutions, whether for felony or misdemeanour, *instituted by the Crown*, the Law Officers of the Crown, and those who represent them, enjoy as their peculiar privilege or prerogative, the right of a general reply, although no evidence be adduced on the part of the defendant. It is unnecessary to remind the professional reader that no such privilege is enjoyed by the prosecuting counsel in an ordinary criminal case; and to those who have had much experience of Criminal Courts, especially in the conduct of defences, the importance attached to the possession of the "last word," and the devices resorted to, and the miscarriages of justice that sometimes happen in the effort to secure it, are well known. The law officers and their representatives, therefore, seldom appear as prosecutors without having their privilege challenged, and at least a protest entered against its exercise, though the Judges—whatever their opinions about the justice or expedience of the claim—being bound by "immemorial usage," are generally obliged to decide in favour of "privilege." The objectors, however, are encouraged in their course by the fact that the Judges have not adopted one uniform rule on

this subject, and are not quite agreed either as to the cases in which, or the persons to whom, the privilege is applicable ; for, while the majority of them have held that the law officers and those who represent them were entitled to the privilege, others, such as Mr. Baron Martin and Mr. Justice Byles, have restricted it to the Attorney-General of England in person, and declined to accord it to the Attorney-General of the County Palatine of Lancaster—even when prosecuting within that County.

In former times, when this privilege was but seldom claimed, its exercise was scarcely felt to be a public grievance. But the circle of privilege has been gradually widening, and from the Attorney-General it has got to the Solicitor-General, and from them to any one who says he represents the Attorney-General : from the strictly criminal cases to cases in the Exchequer in which the Crown is concerned (6 Ex. 464), and now, under the Prosecution of Offences Act, 1879, Lord Justice Bramwell has held that the privilege of the reply may be claimed in a case instituted by the Director of Public Prosecutions, under the direction of the Attorney-General (case of the Directors of the Northern Counties of England Fire Insurance Company, tried at Manchester Summer Assizes, 1880). The grievance, therefore, seems to have become sufficiently frequent and wide-spread, and the champions of privilege sufficiently loud in their demands, to justify us in directing attention to the subject, and inquiring into the grounds for its existence. A crime being a violation of a right, considered in reference to its effect on the community at large, and one of the professed objects of the institution of Civil Government being the maintenance of the order and conservation of the peace of the community, the prosecution and punishment of crime would seem to be one of the primary duties attaching to the Crown, whose peace has been infringed, and whom therefore such offences chiefly concern. The

offence is not against the individual injured, but against the community or State, and therefore a prosecution should be instituted, not by the individual, but on behalf of the State by its own officer. Such a duty has, indeed, been recognised and acted on by most States, but in England only to a limited extent; criminal proceedings here being "as the general rule, instituted at the instance of a private prosecutor, that is to say, either by the person who has himself been the subject of the offence, or (in the case of misbehaviour, punishable by the infliction of a penalty) by some common informer for the sake of money; and it is only occasionally that the Crown interferes directly, and that the alleged offender is prosecuted by the Treasury, and the Attorney-General directed to conduct it" (Stephen's Commentaries, vol. 4, p. 376). For though the Sovereign lends the sanction of her name to a prosecutor whenever there is sufficient ground for instituting a criminal suit, that is about the utmost she affords him; he cannot even file an information through the Master of the Crown Office, in the case of "gross misdemeanours," without incurring expense as well as trouble, and in ordinary cases finds his firmest ally in Policeman X.

A system of law that has grown up so gradually as that of England has—composed of so many different elements, and into which custom enters so largely, is tolerably certain to exhibit some anomalies in the eyes of the "Scientists." As Bacon has put it—"Like as waters do take tinctures and tastes from the soils through which they run, so do civil laws vary according to the regions and governments where they are planted, though they proceed from the same fountain." And the English being essentially a practical people, as M. Taine has pointed out, prone to the study of facts rather than fancies and theories, the writers on English law, when laying down its theory and reducing its principles to the hard and fast lines of the civilians, are ever and anon

thwarted in their efforts by the irrepressible "immemorial usage"—and thus we often find that "the philosophers advance many things that appear beautiful in discourse, but lie out of the road of use" (Advancement of Learning, book 1, chap. 3). Though, therefore, in theory, the commission of any crime is an outrage on the entire community, and, as such, ought to be prosecuted by the officers of the State as representing the public, still, in practice and in fact, it is not so recognised in England. When A. has his handkerchief or his watch stolen from him, it is seen that although the entire community ought to feel aggrieved, and forthwith proceed to vindicate its broken peace and security, practically, it takes but little interest in it, and is not visibly affected thereby. The State, therefore, while theoretically disapproving the thief's action, leaves the particular unit of the community, who has been more particularly personally aggrieved, to make his complaint to the typical Policeman X, who, in the end, is probably bound over to prosecute, and in the majority of cases discharges the functions of a Public Prosecutor at a very modest outlay on the part of the public. Particular kinds of crime, however, seem to have the effect of perturbing and calling into action several units, and then an outraged community is represented by some association or society, whose professed anxiety may be to suppress vice; or to protect the female sex; or to save donkeys and other animals from undue cudgelling or over-persuasion on the part of their drivers. But it is only in a very few instances, and in the case of atrocious crimes and great commercial or social frauds, that the community, as represented by the State, awakes to a consciousness that its interests are in jeopardy, and becomes sufficiently agitated or affected as a whole to take practical action by the hands of the Treasury officers. That this is no exaggerated picture of the present condition of public prosecutions in this country, will sufficiently appear from

the following description of the cases that are taken up by the Treasury, extracted from the speech of Sir R. A. Cross (then Home Secretary), on the discussion of the Prosecution of Offences Bill, 1879:—"If," he says, "there now is a case which is supposed to be an important one, an application is made to the Secretary of State to take it up as a Government prosecution, and, if it is decided to do so, an order is at once made to consult the Solicitor to the Treasury; and at the present moment there are a number of prosecutions that, either by law or practice, the Secretary of State may require the Treasury Solicitor to take up. The Attorney-General is, therefore, practically a Public Prosecutor" (Parl. Debates, vol. 244, p. 973). The practical outcome of all this has been that, except in those few "important" cases which attain the dignity of public prosecutions under the care of an official who is "practically a Public Prosecutor" (the number of cases prosecuted annually by the Treasury, exclusive of Mint cases, being considerably under 200, out of a total of nearly 15,000), crimes, as a rule, have hitherto been dealt with as matters that concerned only the person aggrieved and the accused, and have been placed on much the same footing as a civil action. Even now, with a Director of Public Prosecutions, the condition of affairs, though nominally improved, is no better. At the time of the passing of the "Prosecution of Offences Act, 1879," the unsatisfactory condition of the subject was admitted by all parties, and the duty of the State to provide for the due prosecution of all offences insisted on. In 1834, in 1854 and 1855, and in 1873, committees had sat upon the subject and reported strongly in favour of the appointment of a Public Prosecutor, and the Lord Chief Justice of England had declared his views as to the duty of the State *à propos* of the prosecution of crime.* And yet the whole result of their deliberations is this:—"It shall be the duty of the Director of Public Prosecutions, under

the superintendence of the Attorney-General, to institute, undertake, or carry on such criminal proceedings" . . . "as may be, for the time being, prescribed by regulations under this Act, or may be directed in a special case by the Attorney-General." "The regulations under this Act shall provide for the Director of Public Prosecutions taking action in cases which appear to be of importance or difficulty, or in which special circumstances, or the refusal or failure of a person to proceed with a prosecution, appear to render the action of such Director necessary to secure the due prosecution of an offender" (sec. 2). Section 6 provides, that when the Director of Public Prosecutions abandons, or neglects to carry on, any criminal proceeding undertaken by him, the aggrieved parties may, under certain conditions, proceed with them, and sec. 7 enacts, "that nothing in this Act shall interfere with the right of any person to institute, undertake, or carry on any criminal proceeding." We have thus nominally taken a step in the right direction in appointing a Director of Public Prosecutions. But this Director is himself to be directed by the Attorney-General, and to be subject to his regulations, he being still apparently what he was formerly described to be—"practically a Public Prosecutor." And when we come to enquire into the nature of the public prosecutions that are to be directed by him, the delusion is at once dispelled, and we find ourselves face to face with our old friends under a new name. He is simply to direct the cases of "importance or difficulty," or that contain "special circumstances" and the other ingredients that mark the "number of prosecutions that, either by law or practice, the Secretary of State may require the Treasury Solicitor to take up," to use the words of Sir R. A. Cross, in the speech already referred to. The class of cases deemed worthy of the dignity of "public prosecutions" will thus remain nearly as limited as before; while under sec. 6, there is the

possibility of the undignified spectacle of criminal proceedings being carried on after they have been abandoned, or after a refusal to undertake them, by the Director of Public Prosecutions, and even in spite of him. Indeed, this last contingency has already actually been realized at the last August Sessions of the Central Criminal Court, when a man named Gudotti, after a coroner's jury had returned a verdict of "accidental death," and the Public Prosecutor had declined to take up the case as one not proper to be prosecuted at all, was arraigned on a charge of manslaughter. Mr. Commissioner Kerr characterised the prosecution as wholly unnecessary, and costing the country a sum of money that might have been saved, and intimated, that if a similar case came before him again he should disallow the costs, unless the Public Prosecutor had charge of it. He would, he said, set his face against unnecessary prosecutions by private prosecutors, and the police must understand that they must not take it upon themselves with solicitors to prefer charges, simply because of the bill of costs that would result. The whole of the change effected by the Act of 1879, reminds one very much of the scene depicted in *Punch*, during the early stages of the Afghan war, where some of the members of a Highland regiment were seen lying at their ease in the sun in the back-ground "daein naething," as described by the sergeant, who further expressed his intention of sending up some more of the men to help them to do it.

We have, in short, begun our reformation at the wrong end, by erecting the head of a department before we have got the department itself:—a director who, as yet, has nobody to direct. We have ornamented and gilded the top of the structure, and neglected the lower portions where all the mischief lay, and where all the fraud and "putting on the screw," the debt collecting, and the compromising are done, and where alone they are possible.

We are thus no nearer the practical realization of a Public Prosecutor than before; and, as pointed out by the present Home Secretary (Sir W. V. Harcourt) while discussing the Bill of 1879, there can be no satisfactory administration of justice, unless we have something like a Procurator Fiscal, such as exists in Scotland, who is responsible for *all prosecutions*.

No one could, of course, object to the State being relieved of its duty by means of voluntary effort, and the public purse being, to that extent, spared. But private individuals or societies, unlike those boroughs where the municipal authorities have undertaken the duty, which is efficiently carried out by a properly qualified officer, are under no obligation to take up every case, even of the kind they have taken peculiarly under their protection, and, among those they choose to take up, their zeal is not always tempered by discretion—their enthusiasm has even been known to occasionally eventuate in prosecutions that might be described as “harassing.” Enthusiasts may err by doing too much as well as too little, and the champions of virtue have, sometimes, by ill-timed action, been the means of gaining currency for, and giving notoriety to, a class of literature that otherwise might have remained in not unmerited obscurity. The existence of these associations, therefore, even when they keep within bounds, is no more an argument against the establishment of Public Prosecutors, than the existence of voluntary schools was against the establishment of School Boards and compulsory education. It is even open to individuals to make use of the present system merely to vent their spleen, or to turn the Criminal Courts to the purposes of fraud and extortion, and convenient substitutes for large or small debt Courts; while in very many cases they are apt to be too lax and rather “bear the ills they have, than fly to others that they know not of,” in the shape of worry and expense; and thus it

comes to pass (as writers of acknowledged authority have pointed out) that many crimes have gone unpunished.

Some, while admitting the evils resulting from the present system, have urged that the change to Public Prosecutors would be too sweeping and sudden, and have suggested the adoption of gradual and tentative measures, which seems very much like suggesting to a man whose limb must be amputated that it would be better to have it done piecemeal, as then he would not miss it so much. The expense has been the bugbear of many—though other countries have willingly faced it, and it has not been shown that it would necessarily be much increased—while a few have taken refuge in that last resource of the supporters of a hopeless cause—that it is “un-English.”

This practical refusal of the facts of English criminal law and practice to accommodate themselves to theories, in the framing of which they have not been consulted, has manifested itself throughout. The whole spirit of the English system of criminal procedure has been to regard a criminal trial as in form a public inquiry, but in substance and in spirit a mere litigation between the prosecutor and the accused (*Vide* Mr. Justice Stephen's General View of the Criminal Law). The ordeal among the Anglo-Saxons, and the appeal of the Normans, were to all intents and purposes private lawsuits; and there being no public officer whose duty it was to prepare the evidence, &c., against the criminal, the task was left to those who felt aggrieved and wished to bring the criminal to justice.

Under a system which thus left every one to look after his own interests, a criminal trial might be the result of a complaint by an individual accuser, as the person aggrieved, which was the method of trial by Appeal; or the accusation might be by common report or general knowledge of the public, as indictments and presentments in fact were, and, in theory, still are, and where the King or Government were

personally and directly aggrieved, by Information and Impeachment.

In an appeal of felony, the individual accuser—the person aggrieved either immediately or mediately as the Avenger of Blood—had complete control over the whole proceedings, which were looked upon as a demand for redress on account of the particular injury suffered. And so little were the public supposed to be interested in it, that if the “one visible magistrate” to whose keeping the interests of the community have been confided, had in a virtuous mood, been first in the race, and had indicted the accused, and he had been convicted and afterwards pardoned, or had been acquitted, he was still liable to be “appealed” by the person aggrieved. The appellee, if convicted, was liable to the same punishment as if he had been found guilty on indictment, but with this difference, that though the King might pardon and remit the execution of the sentence on an indictment, he had no legal right to pardon a person found guilty on an appeal of felony, it being a proceeding instituted at the suit, and in the name, of a private individual: “the general principle being clear that the King cannot pardon in cases when no interest is, either in point of fact or by implication of law, vested in him” (Chitty on the Prerogative).

This method of private prosecution, whose spirit still pervades our criminal procedure, and which existed *eo nomine* down to 1819, when the defendant in *Ashford v. Thornton* threw down his gage on the floor of the King's Bench and claimed the ancient, but then nearly obsolete, privilege of defending an appeal of murder with his body,—being viewed as a private litigation between the parties concerned, was conducted in all respects as a civil suit. The parties fought the legal duel on equal terms, and as a complainant had always enjoyed the right of employing counsel to conduct his case, a similar privilege was conceded to the appellee.

In 1730, when Thomas Bambridge was indicted at the

Old Bailey for the murder of Robert Castell, and acquitted, Mrs. Castell, the widow, sent out an "appeal of murder" against Bambridge and Corbett, the deputy warden of the Fleet, when the appellees put themselves upon the country and were tried before Lord Raymond, and a jury of London merchants. "The appellees were ably defended (says Lord Campbell) by Serjeant Darnell and Serjeant Eyre, who both addressed the jury in their favour in long and eloquent speeches, and, by calling witnesses, they made out a clear defence" (Life of Lord Raymond).

In the case, however, of prosecutions at the suit of the public or of the State, the relation of the parties was completely altered—it was no longer two private litigants pitted against each other in a lawsuit, but a solemn public enquiry in which everything, save the interests of the community, seemed to be ignored. And the accused was dealt with in a spirit strangely at variance with our modern notions of fairness.

The time was when the difficulties an accused person had to contend against were much greater than they are now; when the supposed common law right of every subject to appear by counsel, whenever that privilege was accorded to the other side, though always conceded in cases of misdemeanour (6 State Trials, 797), was long subject to exceptions in cases of treason and felony, in which he could neither have counsel to deal with, nor witnesses to depose to, facts on his behalf. On the trial of Sir Nicholas Throckmorton for treason in 1554 (1 State Trials, 870), the prisoner proposed to call a witness on his behalf; and, having called him, this is what happened, in the words of the report:—

"Then John Fitzwilliams drew near to the bar, and presented himself to depose his knowledge in the matter in open Court.

"Attorney-General: I pray you, my lords, suffer him not

be sworn, neither to speak; we have nothing to do with him.

“Throckmorton: Why should he not be suffered to tell truth? And why be ye not so well contented to hear truth for me, as untruth against me?”

“Hare: Who called you hither, Fitzwilliams, or commanded you to speak? You are a very busy officer.

“Throckmorton: I called him, and do humbly desire that he may speak, and be heard as well as Vaughan, or else I am not indifferently used; especially seeing Master Attorney doth so press this matter against me.

“Southwell: Go your ways, Fitzwilliams, the Court hath nothing to do with you; peradventure you would not be so ready in a good cause.

“Then John Fitzwilliams departed the Court, and was not suffered to speak.”

He might, indeed, have any point of law that arose argued by counsel *if the Court thought proper to allow it*; but as to facts, which it was alleged must be best known to himself, he was thought to have no need of aid (5 State Trials, 466). In 1377 on the prosecution of Latimer he craved “counsel and day,” but William of Wykeham said it was not meet he should have counsel or day, “for no man knew his deeds so well as himself” (St. Alban’s Chronicle, Appendix to Introduction, p. 72). So likewise at the trial of Don Pantaleon Sa, on a charge of murder, in 1654, he prayed that he might have the assistance of counsel in conducting his defence. Rolle, C.J., said, “By our rules of proceeding this may not be. On questions of law only, are prisoners tried for felony to have the assistance of counsel. With respect to facts they are supposed to be competent to conduct their own defence, and in this case you shall find that we the Judges stand equal between you and the Commonwealth” (5 State Trials, 460).

And although this “rule of proceeding” remained in

force for 182 years after this, its hardship was even then recognised. Lord Commissioner Whitelock writes:—"I confess I cannot answer the objection that for a trespass of 6d. value a man may have a counsellor-at-law to plead for him, but when his life and posterity are concerned he is not admitted this privilege and help of lawyers. A law to reform this, I think, would be just, and give right to the people. What is said in defence, or excuse, of this custom is, 'That the Judges are of counsel for the prisoners, and are to see that they shall have no wrong.' And are they not to take the same care of all causes that shall be tried before them?" (Whitelock's Memorials, November, 1649).

Gradually, and with halting steps, the reform of these abuses has been effected, though their removal has, in some instances, been more owing to the vehemence of party spirit than concern for the liberty of the subject. To the Jacobites we owe the "Bill for regulating trials in cases of treason and misprision of treason"—a bill strenuously resisted by the Whigs and vilified by Burnet, who didn't understand it—but ultimately carried in spite of obstinate opposition and after many failures. Sir William Parkyns was tried for high treason on the 24th March, 1695-6, after the above Act had passed, but *one day* before its provisions were to come into operation. He applied for a postponement of his trial—if only for a day—which would have entitled him to have the aid of counsel in his defence; but it was refused, and on his urging that counsel should be allowed him, the statute declaring that "it was always just and reasonable," Holt, C.J., replied, "We are to proceed according to what the law is, and not what it will be." This Act—the 7 & 8 Will. III. c. 3—allowed counsel in treasons; the 20 Geo. II. c. 30, conceded a similar right in Parliamentary impeachments; and in 1836 was passed the 6 & 7 Will. IV. c. 114, which enacted that "from and after the first day of October next, all persons tried for felonies

shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel learned in the law, or by attorney in Courts where attorneys practice as counsel." Indeed, so careful has the law grown of the liberty of the subject, and so great its anxiety to deal fairly with him, that in cases where no counsel is employed for the prosecution, the prosecutor is not allowed to address the jury, but the evidence is gone into at once.

Though the Queen is the "one visible magistrate" to whom has been confided the conservation of the public peace—though every crime is, at common law, alleged to be against her peace, and she is bound to lend the sanction of her name to the prosecution of any indictment found by a Grand Jury—we have ventured to enumerate prosecutions at the suit of the Crown and of State, not in their representative capacity, but as the "parties aggrieved," as forming a distinct branch of the prosecutions known to the criminal law of England. For the Queen's ordinary suits are of two kinds: either she acts upon the information or relation of other men as, for example, in indictments, which are found upon the oaths of a Jury, when the Queen appears as formal prosecutor, *e.g.*, "The Queen on the prosecution of A. B.;" or she appears as the actual prosecutor in informations at her own suit, &c. For this latter purpose she has her Attorney-General, whose duty it is to exhibit informations and to prosecute for the Crown in matters criminal. He proceeds as the actual prosecutor for the Crown, and enjoys as his prerogative the right of exhibiting and filing *ex-officio* informations in the name of the Sovereign in criminal cases. This officer, of whom Wilmot, C.J., says he finds no traces for centuries after the Conquest, was in Spelman's opinion the great officer for pleas of the Crown, who prosecuted by his own proper authority for the King. The Attorney-General, said Yates, J., in *Rex v. Wilkes*, 4 Burr. 2527, is the officer of the King.

. . . . Informations exhibited by the King's Attorney-General are considered as the King's own prosecutions, and are called "Declarations for the King," therefore no costs are paid upon them. In the other informations (*i.e.*, those filed by the Master of the Crown Office at the suit of a subject), costs "are often payable." And in the same case, Lord Mansfield observes:—"An information for a misdemeanour is the King's suit. The title of the cause is, 'The King against the Defendant.'"

From an early period it seems to have been customary for the Attorney-General, when he appeared *ex officio* as the prosecutor for the King, in informations, treasons, &c., and what were emphatically *State* prosecutions, to claim the privilege or prerogative of having the last word under all circumstances. This claim seems to have been readily conceded in deference to the high authority on whose behalf it was demanded; and as the Sovereign was not bound by the ordinary rules as to the time within which he could pursue his remedy, there was, perhaps, nothing surprising in his conducting it in a different manner from that of οἱ πολλοί. On the trial at Bar of Dr. Hensey, for high-treason, 1578, although no evidence was called for the prisoner, York (Solicitor-General), as the second counsel in the case, was allowed to reply on behalf of the Crown. On the trial of Robert, Earl of Somerset, before the Lord High Steward, in 1616, after the evidence for the prosecution was closed, and the prisoner had made his defence, the Attorney-General (Sir Francis Bacon) said: "It hath, my Lord, formerly at arraignments been a custom, after the King's Counsel and the prisoner's defence hath been heard, briefly to sum up what hath been said; but in this we have been so formal in the distribution, that I do not think it necessary."* So on the trial in the King's Bench, on indiotment

* Bacon seems to have been ready on all occasions to assert his prerogative, In the case of the Lords Presidents of Wales and York, 12 Coke, 53, "and for

at suit of the King, of Thomas Harrison, for words spoken against Mr. Justice Hutton, in 1638, after the prisoner had made his defence, the Attorney-General replied. Again, on the impeachment of the Earl of Wintoun, in 1716, though no evidence was offered on behalf of the prisoner, the managers for the House of Commons were requested to make their reply. And on the impeachment of Lord Lovat by the Commons, in 1746, no evidence being adduced for the defence, the Lord High Steward informed the prisoner that "the Commons, by the constant rules of proceeding in cases of this kind, are entitled to the last word."

The same rule of procedure was followed with even less varying certainty in all *ex officio* informations. Once only do we find an Attorney-General manifesting any hesitation as to the privileges of his high office, and basing his claim to the reply on no higher grounds than those of an ordinary mortal. On the trial of Woodfall for libel in publishing Junius's "Letter to the King," in 1770, the Attorney-General (De Grey) ventured to believe that he had a right to reply because of the defendants having stated points of law "which he did not allow." But his doubts were soon dispelled by Lord Mansfield, who told him "that as Attorney-General he might reply, notwithstanding the defendant had not examined witnesses; that the Solicitor-General, indeed, or any other counsel, could not, but that the Attorney-General might" (20 State Trials, 900).

On the trial of Horne Tooke, on a criminal information for libel, in 1777 (20 State Trials, 652), the unfairness of the Attorney-General's right of reply was strongly urged, but to no purpose. "The established practice and approved rules

the motion to have the rule set down, &c., it was moved by the King's Serjeant, and we advised thereupon; when this had been thus delivered, by way of answer, Bacon, the King's Solicitor, offered to reply, but after the Judge had spoken in the name of all his brethren, the Lords would not suffer him to speak after the Judge."

of the Court are so," urged Horne, "only because they are reason, and reason approved by long experience; and they obtain as rules and practice only for that cause." . . .

"The established practice and approved rule of the Court in trials of this kind (when the Attorney-General does not prosecute) was, that if the evidence brought for the prosecution is not controverted by any other evidence on the part of the defendant, but the fact, as far as it depends upon testimony, taken as the prosecutor's evidence left it; that then the defendant's answer closes the pleading, and that, my Lord, has obtained and been established as the approved rule and practice of the Court, because it is supposed the method best calculated for the obtaining of justice; that is, for the conviction of the guilty and the acquittal of the innocent, for both are to be regarded; and when that is done, then only, I suppose, is justice done."

. . . . "It must be supposed the best method of obtaining justice." It is the King's interest to obtain impartial justice. "But this claim of Mr. Attorney-General, my Lord, absurdly supposes the contrary, and that the King has an interest in their being convicted, and that therefore easier and readier means, and greater means, are to be allowed to the King for obtaining a conviction than are allowed to any other person, my equal or my inferior." To all this, however, Lord Mansfield replied, "I am most clear that the Attorney-General has a right to reply, if he thinks fit, and that I cannot deprive him of it."

"There is not a State Trial where the Solicitor-General or the Attorney-General has not replied."

Lord Mansfield, in charging the Jury in Horne's case, with regard to the Attorney-General's right of reply, says: "Now, I will tell you what I take to be the practice with regard to that matter. *The nature of a reply is the plaintiff's answer to new matter advanced by the defendant.* The plaintiff knows his own case; he knows his own witnesses; he opens

it; he observes upon his witnesses; and he draws such conclusions from them as he thinks proper to persuade a Jury to increase the damages. The defendant, if he only makes observations upon the same evidence, and only draws conclusions from the same evidence to the Jury to lessen the damages, why, then, there is nothing new, there is no new matter at all; and by the practice for the expedition of business in civil cases, and in prosecutions in the name of the King, with common informers, the practice is that they don't reply when that is the case. But notwithstanding that, if the defendant was to start a point of law, the other must be heard. If he was to throw out to the Jury, to catch and to surprise them, allegations of fact which he called no witnesses to prove, then the counsel for the plaintiff may set the Jury right, and lay them out of the cause, and show that they are absolutely irrelevant and immaterial. But *in solemn trials, in State prosecutions*, where the Attorney-General attends, I never knew it denied but that he had a right to reply. I was many years Solicitor-General; I was Attorney-General; I have known it often, where nothing has been said for the defendant that they thought called for a reply. I never knew it denied to the Attorney-General when he insisted upon being heard in reply; and I believe the present Attorney-General has replied several times. This is so much the law of the land, that (if my memory does not fail me) in the most solemn cases (and, as I speak from memory only, if there should be any slip in it, I hope I shall be excused), and, to the best of my memory, in the trial of my Lord Byron—(if any gentleman can correct me I shall be very glad to be corrected—I dare say there are some here that were of counsel in that cause)—in the trial of Lord Byron, who called no witnesses, no evidence, the Attorney-General replied. The House of Commons, as the public prosecutor for the nation, insist upon it as an absolute right,

that they are to reply. It is a great while ago, but if my memory does not fail me, I think I replied for the House of Commons upon the trial of Lord Lovat, though he called no evidence. I speak from memory; it is many years back; and therefore, if I am mistaken, I do it with that reserve and qualification to be set right. This has nothing at all to do with the cause; but it at least explains, to those who want to understand it, the light in which I see that matter, and the ground upon which I determine it" (20 State Trials, 762-3).

With the foregoing exposition of the nature of a reply no one could quarrel, and were it applied to solemn and state prosecutions the Attorney-General's prerogative would not now be left to us for discussion. His Lordship's memory, however, does seem to have been at fault in the case of some of his illustrations. When Lord Byron was tried for murder in 1765, before the Court of the Lord High Steward, the Solicitor-General (as second counsel) summed up his case at the close of the prosecution, and then the Lord High Steward: "My Lord Byron, *the Counsel for the Crown have done*; now is the time for your Lordship to make your defence; and if you have any witnesses to examine, now is your time to call them." He called no witnesses; he read his defence; their Lordships adjourned to the Chamber of Parliament and gave their opinions "upon their honour."

On the trial of Weston for the murder of Sir Thomas Overbury, the Attorney-General, with others, prosecuted. At the close of the case for the prosecution, Mr. Warr, the junior counsel, "craved leave of the Court to speak," and this done, "Weston was demanded what he could say for himself," and "so the Court referred him to the Jury." And the same course was pursued on the trial of Sir Jervis Elwes on the same charge.

At a meeting of twelve of the Judges for the purpose of choosing the Spring Circuits in 1837, a discussion took place as to some points which were likely to occur at the

Assizes, in consequence of the recent Act allowing prisoners indicted for felony to make full defence by counsel (6 & 7 Will. IV. c. 114), and the following was one of the rules which they adopted:—

V. "In cases of public prosecutions for felony, instituted by the Crown, the law officers of the Crown, and those who represent them, are, in strictness, entitled to the reply, although no evidence is produced on the part of the prisoner" (7 C. and P., 676).

Upon the same ground of his being prosecutor for the King it is that the right of a general reply is accorded the Attorney-General in prosecutions in the Queen's Bench, and on Informations in the Exchequer. But the right is strictly confined to cases at suit of the Queen; and though attempts have been made to extend it to cases in which the Queen was substantially a defendant (which technically she cannot be), the Court has usually resisted such overtures though, in some instances, it has given way.

Rowe v. Brenton (3 Manning and Ry., 133), in the King's Bench in 1828, was an action of Trover for copper ore raised from an estate in Cornwall. The title of the Duke of Cornwall being materially implicated, the officers of the Duchy, on the application of the defendant, took upon themselves the defence of the action, and an application was made by the Attorney-General to have a trial at Bar, he officially informing the Court that the Crown was interested in the actions. At the trial, after the plaintiff's evidence had been given, and the defendant's (*i.e.*, substantially the Crown's) evidence in reply closed, Lord Tenterden, C.J., called upon the Attorney-General to go on. But he contended that, representing the Crown, he had a right to the general reply after the plaintiff's counsel should have been heard; that this was a proceeding in the nature of an Information in the Exchequer, and substantially the same as if the King were a party on the record; and that, in

cases where the civil rights of the Crown are concerned, and the issue is on the defendant, the Attorney-General has the right of reply.

Brougham, for the plaintiff:—"In a cause carried on by the Crown, if the two circumstances concur, of the Crown's being the party on the record and being the substantial prosecutor, it is as if the Attorney-General had filed an *ex officio* information, and he has the right of reply whether the defendants call witnesses or not; but here the Attorney-General does not appear on the record."

Lord Tenterden, C.J.:—"No instance being shown in which the Attorney-General has, in a case like the present, had the reply, we think it safer not to extend the rule, but to allow the cause to take its ordinary course."

Yet some twenty years later, in *The Marquis of Chandos v. The Commissioners of Inland Revenue* (6 Exch., 464, 1851), which was a case stated in the nature of an appeal by the Marquis of Chandos against the determination of the Commissioners as to the stamp duty chargeable on a deed, the majority of the Court held that *the appellant ought to begin*. The appellant's counsel began, the Solicitor-General argued for the Crown, appellant's counsel replied, and then the Solicitor-General claimed the right to reply generally, and his claim was allowed, Pollock, C.B., saying, "In this Court it has been the universal practice, whether on motion, on pleading, or on argument, that the officer of the Crown has the right to a general reply, in all cases where the Crown is concerned." Bearing in mind that the prerogative in all these cases, whether criminal or fiscal, depends on the same principle, that of the personal interest of the Sovereign, it is—but the law is never, "well, hardly ever," inconsistent—to read the above decisions after—*mais c'est drôle* to read, &c., cases where the Crown is substantially in the position of a defendant, as in appeals to the House of Lords. Thus it was in *Lord Douglas v. The Officers*

of State (9 C. & F., 200), declared "That it was not the usage of this House for the Attorney-General to have a general reply on the part of the Crown," and in *O'Connell v. The Queen* (11 C. & F., 155), a writ of error on indictment, in which the Crown was a defendant, it was intimated that counsel for the Crown would not necessarily be entitled to the final reply, and, in fact, the Attorney-General, though not abandoning his claims, did not reply. While in *The Queen v. Frost* (9 Car. & P., 165), in which a point arising on an indictment for high treason was reserved for the consideration of the judges, the counsel for Frost was allowed a general reply to the Attorney-General.

There is obviously a real and appreciable distinction between prosecutions at suit of the Queen as the person aggrieved, and those which, though in name of the Queen, are at the suit of the public. The *ex-officio* informations, and the solemn and State prosecutions, may very nearly touch the interests of the Crown; while those at suit of the public only do so in the sense that every prosecution throughout the country does. We have endeavoured to show historically that it was to the former class of cases that the Attorney-General's right of general reply was restricted; but in modern times by a lax, and as we think unwarranted interpretation of the term prosecutions by the Crown, attempts have been made to include cases under them which, if truly embraced therein, must logically extend them to all criminal proceedings, and convert the Attorney-General's privilege into the common inheritance.

The Court say, in *The Attorney-General of the Prince of Wales v. Crossman* (4 H. & C., 568), "We are agreed that it is for the officers of the Crown to make out clearly the prerogative in any case where they claim to be on a different footing from the subject, as regards procedure, in litigation." Now, though some men are doubtless more easily convinced than others in a matter of prerogative, it would

be desirable to have a somewhat uniform course of practice adopted; but in the actual decisions there is a charming variety, which ought to satisfy the most ardent supporter of the 'glorious uncertainty of the law.'

In *Rex v. Marsden, Alexander, and Isaacson* (M. & M., 439), which was a prosecution instituted by the Duke of Wellington against the defendants for a libel on him, as one of Her Majesty's Ministers, published in *The Morning Journal*, which prosecution had been taken up by the Treasury and conducted by the "Attorney and Solicitor-Generals, and the usual counsel for the Crown," the Attorney-General stating that he appeared in his official character: Lord Tenterden, C.J., said: "There is no doubt of the rule, wherever the King's counsel appears officially, he is entitled to reply." But in *Rex. v. Bell* (M. & M., 440), which was a criminal information for a libel on the Lord Chancellor, published in *The Atlas*, "the Attorney-General conducted the prosecution, and stated that he appeared as the counsel and private friend of the Lord Chancellor, and no evidence being offered for the defence, he did not reply."

In prosecutions for offences against the Mint, the Solicitor-General, as the representative of the Attorney-General has, on his statement that he appeared officially, been held entitled to the general reply (*Reg. v. Toakley*, and *Reg. v. Barrow*, 10 Cox, C. C.) And in cases prosecuted by other Government Departments, such as the Post Office, where on an Indictment for stealing money from a post letter "the property of the Postmaster-General," the prosecuting counsel claimed the right to reply as the representative of the Attorney-General, Pollock, C.B., said: "If this is a prosecution by the Attorney-General, those who represent him, though not usually Counsel for the Crown, have the right to reply, as in the Mint cases at the Old Bailey" (*Reg. v. Gardner*, 1 C. and K., 628). Fortified by such rulings in their favour, the reader will not be surprised to learn

that attempts have been made by those who are the recipients of such Government patronage as is usually dispensed by the Attorney-General, to make the world believe that they were the official representatives of that officer, and entitled to all his privileges. We have even heard a "provincial" solemnly request a Court of Quarter Sessions to make a special fixture—order the county's business to stand aside in awe—while the Court summoned all its energies for the investigation of the uttering of a bad sixpence, on the ground that "he represented the Attorney-General." If all those claimants were to succeed it is hard to say where it would end; the Attorney-General appoints a great variety of prosecutors for almost every purpose—even smoke prosecutors—and nothing but their generous forbearance could save us from a deluge of "privilege." Fortunately their success has not been quite commensurate with their courage. In *Reg. v. Taylor* (1 F. & F., 535), which was a Mint prosecution tried at York assizes, before Mr. Justice Byles, no evidence being offered on behalf of the prisoner, counsel for the prosecution magnanimously announced that he waived his right of reply. But the learned Judge at once rejoined, that he did not admit the existence of any such right on the part of the Crown. The learned editor of "Russell on Crimes," says: "On the Oxford circuit, I never knew the right to reply claimed in a Mint case. I was, myself, counsel for the Mint at Hereford, Monmouth, and Gloucester, for many years, and never claimed, or had it suggested to me, that I should claim, the reply when no evidence was given for the prisoner" (Vol. 3, p. 431 in notes); and yet offences against Her Majesty's current coin, prosecuted by the Treasury Solicitor, seem to affect the royal interests. In *Reg. v. Beckwith* (7 Cox, C. C., 505), which was a prosecution directed by the Poor Law Board, Bliss, Q.C. (at that time Attorney-General of the County Palatine), stated that he

appeared for the Attorney-General, and claimed the reply. But again, Byles, J., refused. "The right ought to be limited to the Attorney-General when prosecuting in person. I certainly cannot permit it under any other circumstances."

As with the subject matter of the cases, so with the persons who are entitled to enjoy this prerogative; the oracle is somewhat fickle in its responses. The Attorney-General of England may—so may his representatives, be they the Solicitor-General or "any other man," though much depends on the accident of the Judge who has to decide the point. The Attorney-General of the Prince of Wales, as Duke of Cornwall, has the right to proceed *ex officio*, as held in *Sir John St. Aubyn's case* (Wightwick, 167); and he has since been held to be in the same situation, in this respect, as the Attorney-General of the Crown (*the Attorney-General of Prince of Wales v. Crossman, ut cit.*). On the other hand, it has been held by Mr. Baron Martin, and also by Mr. Justice Byles, that the Attorney-General of the County Palatine of Lancaster is not in a similar position, and enjoys no such right (*Reg. v. Christie*, 1 F. & F., 75), and as the result of the correspondence *à propos* of *Reg. v. Cotton*, at Durham Assizes, March, 1873, the same views seem to be entertained as to the position of the Attorney of the Durham Palatinate.

Whether the counsel of the various Government departments are entitled to the "prerogative" cannot be determined with certainty; sometimes they are, sometimes not, according to the decisions; though, with nearly every department possessing its own solicitor, and habitually represented by its own counsel, it requires a more than usually strong legal fiction to establish the representation.

It was in the year 1836 that the collective wisdom of the nation allowed an accused person to make his "full defence by counsel;" and that favour having been conceded, the

Judges, as of old, were not slow to mould its influences for the public good, and to treat *persons* as if they were *almost* as important as *things*.

In *Reg. v. Butcher and others* (2 Moody & Rob., 229), on the Western Circuit, before Coleridge, J., in 1839, Cockburn (afterwards L.C.J. of England) for the defence (malicious shooting), in his address to the Jury, was proceeding to give an account received from the prisoners, for which, he said, he would be compelled to rely on statements only, as any one who could have explained the transaction was included in the indictment: Coleridge, J., interposed, and said:—"I cannot allow counsel to make any statement of facts not intended to be proved, without giving a reply to the counsel for the prosecution. *The same rule ought to prevail when counsel are defending prisoners, as in civil cases.* When, indeed, a prisoner is undefended, the Court are obliged to hear his whole statement, and the Jury must make the best of it, *but I have often insisted on the rule where counsel were employed, and it ought to be followed.*"

Still, though the keynote was struck thus early, naught but the sacred rights of property engaged the thoughts of the law reformers for many a day, till the success of the reforms in *Nisi Prius* practice, in 1854, seems to have suggested to humane minds that *men* might have rights as well as *things*. And so in 1860, Mr. Denman introduced a bill into the House of Commons, having for its object the assimilation of the proceedings on trials for felony and misdemeanour to those on trials at *Nisi Prius*, so far as related to the regulation of addresses to the Jury. Sir George Lewis (Home Secretary), in supporting the bill, gave it as his experience, in his office, that the fear of not getting the last word often deprived prisoners of the benefit of defences that might fairly have been submitted to the Jury. And in moving the second reading of the bill in the Lords, Lord Brougham averred that: "Under the existing

practice it had been found in too many cases that counsel for the defence, being afraid of the speech in reply on the other side, abstained from calling witnesses, thereby defeating the very aim and end of justice, namely, the discovery of truth. The great recommendation of the bill was, that it placed the procedure in cases of felony and misdemeanour on the same footing as in civil cases. He did not support it on the ground of its being more favourable to prisoners and defendants, but because it was calculated to elicit the truth."

That bill was dropped then, because of the insertion of a clause making it discretionary with the Judge, in each case, to allow or disallow the right to sum up ; but its chief provisions ultimately became law in 1865.

This Act (28 Vict., c. 18), recites the expediency of more nearly assimilating the law of evidence and practice on trials for felony and misdemeanour and other proceedings in Courts of Criminal Judicature to that on trials of *Nisi Prius*, and by sect. 2, provides as follows :—

"If any prisoner or prisoners, defendant or defendants, shall be defended by counsel, but not otherwise, it shall be the duty of the presiding Judge, at the close of the case for the prosecution, to ask the counsel for each prisoner or defendant so defended by counsel whether he or they intend to adduce evidence, and in the event of none of them thereupon announcing his intention to adduce evidence, the counsel for the prosecution shall be allowed to address the Jury a second time in support of his case, for the purpose of summing up the evidence against such prisoner or prisoners, or defendant or defendants ; and upon every trial for felony or misdemeanour, whether the prisoners or defendants, or any of them, shall be defended by counsel or not, each and every such prisoner or defendant, or his or their counsel respectively, shall be allowed, if he or they shall think fit, to open his or their case or cases respectively ;

and after the conclusion of such opening or of all such openings, if more than one, such prisoner or prisoners, or defendant or defendants, or their counsel, shall be entitled to examine such witnesses as he or they may think fit, and when all the evidence is concluded, to sum up the evidence respectively; and the right of reply, and practice, and course of proceedings, *save as hereby altered*, shall be as at present."

Sect. 1 declares "That the provisions of sect. 2 of this Act (that just quoted) *shall apply to every trial for felony or misdemeanour* which shall be commenced on or after the first day of July, 1865."

Bearing in mind that the object of the Act was to assimilate the practice on criminal trials to that at Nisi Prius; that sect. 2 is made applicable to *every trial* for felony or misdemeanour without exception; and that the right of reply only remains "save as hereby altered," the words of section 2 would seem to leave very little of "privilege," or "prerogative," or right of reply, to the Attorney-General or those who declare to the Court that they appear as his representatives in public prosecutions. The only possible occasion left to them by the Act for its exercise seems to be that hardest of all cases, when the prisoner is not defended by counsel—that being the only "present practice" not "hereby altered." And yet prerogative or privilege is not dead—it does not even sleep—but still flourishes and continues to assert itself even more loudly and boldly than before, and, with that greatest of all recommendations—success.

At the last Summer Assizes held at Manchester, on the Trial of the Directors of the Northern Counties' of England Fire Insurance Co., the prosecuting counsel claimed the right to reply on the whole case, though no evidence had been adduced on the part of the defendants, on the ground that, having been instructed by the Director of Public

Prosecutions, he was representing the Attorney-General; and Lord Justice Bramwell, after consulting his colleague, allowed the claim—though the privilege was stoutly resisted by eminent counsel on the part of all the defendants, and, among others, by an ex-Attorney-General (Sir J. Holker) who wished to restrict it to cases in which the Attorney-General was personally engaged. In deciding that the Attorney-General's right of reply remained notwithstanding the Statute, the Judges seem to have been swayed by the consideration that the Legislative cannot abridge the Executive power of any rights which it now has by law, without its own consent—it being a branch of the Legislature; and that therefore it is one of the prerogatives of the Crown that the Queen is not bound by any Act of Parliament, unless she be named therein by special and particular words. "The most general words that can be devised (says Blackstone) (any person or persons, bodies politic, or corporate, &c.) affect not him (her) in the least, if they may tend to restrain or diminish any of his (her) rights or interests." "Yet, where an Act of Parliament is expressly made for the preservation of public rights and *the suppression of public wrongs*, and does not interfere with the established rights of the Crown, it is said to be binding as well upon the King as upon the subject," *i.e.*, by implication and construction (II Rep. 71, 74).

We venture to suggest that, in the case of the Northern Counties' Directors, it was not sufficiently prominently placed before Lord Justice Bramwell that no prerogative of the Crown was in question. The Crown is, in a sense, concerned in all prosecutions, but even in many of those that, both in name and in fact, may concern the Crown—as in Mint prosecutions and Post Office prosecutions—it is not usual to exercise, or to claim to exercise, any such privilege. This privilege of the Attorney-General is, in fact, his *official privilege*, as prosecutor in the name of the Sovereign, and

the language of those who claim it, as his deputies, is always, "I represent the Attorney-General," not "I represent the Crown;" and this seems clearly to have been the view taken of it by Martin, B., in *Reg. v. Christie* (1 F. & F., 75). The Act 28 Vict., c. 18, passed with the assent of the Crown, whose prerogatives are not, in our view, at all involved in its subject matter, is, in its language, quite wide enough to comprehend the Attorney-General, as representative of the public, who personally can have no rights in the nature of a Royal prerogative, or such as to be beyond the reach of the general words of a Statute. We concede that when he appears in his official capacity he still has the right of reply; but the words "official capacity" must have a definite meaning attached to them, viz., as personal prosecutor in the Queen's suits, not as prosecutor for the public. The Royal prerogative has its metes and bounds—there is no spell in the words "official capacity" that can extend it to cases not within their meaning. The Attorney-General, as Public Prosecutor (as by a legal fiction he is presumed to be), has a general control over all prosecutions, and may by *nolle prosequi* intervene when the interests of the public require it; but he is then acting on behalf of the public, and his proceedings must be regulated by their rules. In this sense, every prosecuting counsel in the country represents the Attorney-General; yet he would be a bold man who ventured to claim his "prerogative." And to claim it on behalf of the Director of Public Prosecutions, who is directed by the Attorney-General, even in a "special case" ordered by that law officer, seems not only opposed to the spirit of the plain terms of modern legislation, but at variance with the ancient practice.

"The right of the Attorney-General to reply, whether witnesses are called by the prisoner or not, is an anomaly" (says Mr. Justice Stephen, in his "General View of the

Criminal Law of England," p. 161), "and is probably a relic of the old inquisitorial theory of criminal justice, under which the prisoner had no counsel and could not have his witnesses sworn. It was natural enough that the person who conducted such an inquiry should sum up the results of it." There is an old-world air about it now that makes it look sadly out of place in modern Courts, and, as with other "relics," it would be more seemly to consign it to some place set apart for the custody of such objects, where the curious could inspect it in safety far from the madding crowd.

That the Sovereign should have her privileges—that the Attorney-General should be official head of the Bar, and should, in the words of the royal mandate of 1814, have pre-audience over even the "ancientest of the serjeants"—we readily admit. But that it should now be thought essential for the security of the Queen's interests or those of the State to make use of means that are deemed unfair among her subjects, is no very flattering tribute to the Englishman's sense of fairness, and to a dispassionate on-looker very like a denial of the maxim that the law is no respecter of persons.

"The great Lord Mansfield," to whom the improvements in the trial of causes at *Nisi Prius* are due, and by whom the system now followed was matured, is said, by Lord Campbell, to have "hesitated long about making the right to reply depend upon the giving of evidence by the defendant, as thereby, to avoid a reply, important evidence is sometimes kept back, and inconvenience follows from the defendant's counsel having the privilege of speaking without any answer from his antagonist; but *his* masterly superintendence and great authority kept everything straight, and, while he presided, trial by Jury in civil cases, which in theory appears so absurd, and which answers so badly in Scotland and other countries in which it is not understood, seemed a perfect invention for the administration of justice" (*Vide Life*

of Lord Mansfield, in "Campbell's Lives of the Chief Justices," vol. I., p. 401).

The equitable nature of the practice thus settled by him, after so much doubt and deliberation, and finally embodied in the Act of 1854, has been thoroughly endorsed by subsequent experience, and has received its best and most enduring tribute in the efforts of modern legislation to extend it to our criminal courts.

As the practice established in ordinary trials, by which counsel for the prosecution is precluded from addressing the Jury in reply, when the defendant calls no witnesses, or no new matter is introduced on his behalf, "has been long thought to afford the best security against unfairness;" "it must," in the words of Horne, "be supposed the best method of obtaining justice." In dealing out that impartial justice which the law and constitution have in view, it can hardly be intended now-a-days, that, "greater means are to be allowed to the King for obtaining a conviction than are allowed to any other person" (20 State Trials, 652). The tendency of modern legislation has been to render the practice in criminal trials as nearly as possible akin to that at Nisi Prius, in which the Crown can claim no privilege of a general reply, and the object and language of the Act of 1865 seem plainly to have extinguished it. If the rule as to the reply in ordinary cases be the fair one, the privilege of the Attorney-General and his representatives is manifestly unfair, and its unfairness is most likely to manifest itself in those cases in which it is least desirable that any such suspicion should exist—when presumably the ablest and most experienced practitioner in the profession is, in a murder, or conspiracy, or other important case, pitted against, it may be, one of the most junior members of the Bar. Such are not extreme cases, but of common occurrence, and with a new Government department under the Director of Public Prosecutions, are likely to become even more

frequent, and in these the inequality of the contest is painfully apparent. That its existence is now felt to be a grievance, is undoubted, and its continuance can hardly be defended either on grounds of public policy or necessity; and now that we are to have a Criminal Code, it would be easy to remove all doubt on the matter, by formally abolishing this last vestige of privilege, and adopting one uniform rule on the subject, in accordance with what "reason approved by long experience" has established, as affording "the best security against unfairness in ordinary trials."

JOHN KINGHORN.

II.—THE STATUTE OF USES AND THE PRESENT SYSTEM OF CONVEYANCING: OUGHT THE STATUTE TO BE REPEALED?

AT the time of the passing of the Statute of Uses, in the twenty-seventh year of Henry VIII. (1535), there were two species of ownership of land recognised by English law, namely, the Legal ownership and the Equitable ownership, which latter was commonly termed the Use.

The essential and original difference between the Legal ownership and the Equitable ownership or Use lay in the forum where the right was adjudged. Legal ownership was ownership according to the antient common law, and was alone recognised and enforced by the antient Courts of Law. Equitable ownership was ownership recognised in Equity only, and was enforced by the Court of Chancery only, and not by the antient Courts of Law. Hence, Lord Bacon says:—"Usus et Status potius differunt secundum rationem fori quam secundum naturam rei."

(See Lord Bacon's Reading on the Statute of Uses, p. 5. and Mr. Spence's Equitable Jurisdiction, vol. 2, p. 875).

This distinction of ownership into Legal ownership and Equitable ownership corresponds to the distinction of *Dominium* into *Dominium ex jure Quiritium* and *In bonis habere*, which existed in Roman law prior to the Constitution of Justinian, *De Domino ex jure Quiritium tollendo*, (Codex Just., 7, 25); although, in the Roman jurisprudence, both species of rights were adjudicated upon in the same forum. Moreover, the origin of the distinction between Legal ownership and Equitable ownership is similar to the origin of the distinction between *Dominium ex jure Quiritium* and *In bonis habere*; in each case the distinction originated in the desire to evade the technicalities and hardships of the older *jus civile*, or common law. In England the distinction is said to have been introduced by the ecclesiastics for the purpose of defeating the Statutes of Mortmain; a purpose which was itself defeated by the Statute 15 Rich. II., c. 5. However this may be, the distinction, once recognised, was extensively utilised by all classes of land-owners for the purpose of evading the hardships which were the fruits of the feudal tenures; for the Use or Equitable ownership was not the subject of tenure, and was not subject to those rules, the fruits of feudal doctrines, which regulated and bound the legal ownership until long after the enactment of the Statute of Uses, and in many respects still regulate it.

In England the Equitable ownership seems *originally* to have been always brought into existence, as distinct from the Legal ownership, through the medium of a trust or confidence; that is, through the medium of a formal common law conveyance to one person upon trust or in confidence that he would permit another to enjoy the land. Such a transaction probably had its origin in the Roman *fideicommissum*; and thus the Equitable ownership of

land, as recognised in the English jurisprudence, though exactly analogous to the Roman *In bonis habere*, is historically connected with the Roman *fideicommissum*.

A conveyance of land to one person on trust or in confidence that he would permit another to enjoy it originally created no legal obligation. Trusts, like *fideicommissa*, in their origin, *nullo vinculo juris, sed tantum pudore eorum qui rogabantur, continebantur* (Institutes, lib. 2, tit. 23, l. 1). The trust or confidence was not recognised or enforced at law on the ground that it was repugnant to the conveyance. The Equitable jurisdiction of the Chancellor was either not yet in existence, or did not yet recognise and enforce trusts. The trust or confidence therefore, in its origin created merely a moral obligation. But in the latter part of the fourteenth or the early part of the fifteenth century, the Chancellor took upon himself to enforce trusts or confidences. The ground of his interference was the confidence reposed, and the breach of faith committed. Hence it followed, that the trust was enforced only against the person to whom the conveyance was made in confidence; for it was in him only that confidence was reposed, and by him only that a breach of faith could be committed. The trust was not, therefore, at the period of which we are now speaking, enforced against the heir of a person to whom a conveyance was made in confidence, nor against his alienee (Year Books, 8 Edw. IV., 6; 22 Edw. IV., 6). At this period, therefore, the right of the person for whose benefit the trust was created was not in the nature of ownership, or *jus in rem*, but was obligation, or *jus in personam*, merely (See Spence's Equitable Jurisdiction, vol. 2, p. 875).

It was, however, soon held that the right created by the trust or confidence originally reposed might be enforced against other persons than him in whom the confidence was reposed, namely, against his heir, and also against alienees.

from him who did not give valuable consideration, or who took with notice of the trust. The right then ceased to be mere *jus in personam* and became *jus in rem*; it ceased to be a mere obligation and became a right of ownership. This stage in the history of the Equitable ownership or Use seems to have been reached in or soon after the reign of Edward IV., and at the time of the passing of the Statute of Uses, the Use was a right enforceable, not only against the person to whom the land was originally conveyed upon trust, but also against persons claiming through or under him (persons in *in the per*), either without giving value, or with notice of the trust. In much more modern times it appears to have been established that the right created by the trust or confidence prevails against persons who acquired the Legal ownership, not through or under the trustee, but by title paramount to him (persons in *in the post*); but it does not prevail against a person who has acquired the Legal ownership for valuable consideration and without notice of the trust.

The history of the Equitable ownership or Use may be briefly summarised thus: it is a movement from *mos* to *jus*, and from *jus in personam* to *jus in rem*.

The practice of conveying lands to one person to the use of another (or, as it was technically termed, of putting lands into Use) prevailed so extensively that in the fifteenth century the greater part of the land in the kingdom was held in Use. This practice was extremely prejudicial to the king and the great feudal lords, whom it deprived of the profits of their feudal seigniories, for the Use, as has been already mentioned, was not the subject of tenure, and, by vesting the Legal ownership in a number of persons, the happening of any feudal incidents to the lord was, to a great extent, prevented. The extensive severance of the beneficial interest from the Legal ownership was, moreover, attended with some serious practical inconveniences. The

Use was not extendible, and, therefore, the creditors of the real owner of the land could not make it available for payment of their debts. Purchasers of lands from the Equitable owners were defrauded by latent legal estates produced by feoffees to Uses. Persons claiming the land knew not against whom to bring their real action for the recovery thereof. Treasons were encouraged, for the Use was not liable to forfeiture.

To correct these and other inconveniences, many Statutes were passed relating to Uses before that of the twenty-seventh year of Henry VIII. Thus, by the 21 Rich. II., c. 3, and other Statutes, Uses were made forfeitable for treason. By the 1 Rich. III., c. 1, the conveyances of the Equitable owner (called the *cestui que Use*) were made valid as against persons claiming any legal estate in the land to the use of the conveying party. By the 1 Henry VII., c. 4, it was enacted that real actions might be brought against the pernor of the profits of the lands demanded whereof any person was seised to his Use. By the 4 Henry VII., c. 17, the lord of the fee was entitled to wardship of the heir of the *cestui que Use*, if such heir was under age; or to a relief, if the heir was of full age; in the same manner as if the *cestui que Use* had had the Legal ownership. And by the 19 Henry VII., c. 15, the judgment creditors of *cestui que Use* were enabled to obtain execution of their judgments against lands in which their debtor had only the Use.

These Statutes, however, failed to accomplish their object, as appears by the preamble of the Statute which we shall presently state; and in the year 1535, the twenty-seventh year of Henry VIII., an Act was passed, the 27 Henry VIII., c. 10, concerning Uses and Wills, the design of which appears to have been to extirpate Uses, and prevent the existence of the Equitable or beneficial ownership apart from the Legal ownership, by always annexing the Legal ownership to the beneficial ownership. The enactments

of this celebrated Statute, so far as they are important for our present purpose, may be briefly stated as follows:—

“That when any person or persons shall be seised of any lands, tenements, or hereditaments to the Use, confidence, or trust of any other person or persons, or of any body politick, the person or persons or body politick that have such Use, confidence, or trust, shall be deemed to be seised and possessed of such lands, tenements, and hereditaments, to all intents and purposes, of and in the like estates as they had in Use, trust, or confidence, of or in the same. And that the estate, title, right, and possession that was in the person or persons seised of such lands, tenements, or hereditaments, to the Use, confidence, or trust of any other person or persons, or any body politick, shall be deemed and adjudged to be in him or them that have such Use, confidence, or trust, after such quality, manner, form, and condition as they had before in or to the Use, confidence, or trust that was in them.”

The design of this Statute, as has been already stated, was to prevent the existence of the Equitable or beneficial ownership separate and apart from the Legal ownership, by always uniting the Legal to the beneficial ownership. This design, however, has not been effectuated; for at the present moment, as we all know, the Equitable or beneficial ownership may, notwithstanding the Statute, be severed from the Legal ownership, and exist as a distinct and separate right.

This circumstance was chiefly, if not entirely, due to the construction which the common lawyers, upon whom the duty of construing the Statute devolved, put upon the Statute. Thus, it was held that the Statute does not annex the Legal estate to the Equitable estate where the severance of the latter from the former takes place by virtue of some Equitable doctrine which has been established since the passing of the Statute; for the common lawyers took the

doctrines of Equity as to the creation of Uses as they existed at the time of the passing of the Statute, and (so to speak) crystallised them. In this manner the cases to which the Statute applied were fixed, and its application has not since been extended so as to include cases which have arisen subsequently. If, therefore, at the present day an owner of land without any consideration of money or money's worth, or of natural love and affection, or marriage, executes a simple declaration of trust in favour of another absolutely, the Legal ownership remains in the person declaring the trust, although the Equitable ownership passes to the person in whose favour the trust was declared, and the two rights remain separate and distinct, the Statute of Uses not operating in such a case; for at the time of the passing of the Statute of Uses, the Equitable doctrine was that an Use could not be raised without transmutation of the possession, except upon the consideration of money or money's worth, or that of natural love and affection, or marriage; and this Equitable doctrine was, after the passing of the Statute, transplanted to the Courts of Law; but when, in more modern times, it was established that a declaration of trust was valid, although purely voluntary, the legal doctrine was not modified in like manner, nor was the Statute held to transfer the Legal ownership to him who, in this manner, had acquired the Equitable ownership. In such a case, therefore, and in all other cases of the same class, the Equitable ownership exists separately and distinctly from the Legal ownership, contrary to the design of the Statute.

Again, since the Statute speaks only of the case of one person being *seised* to the Use of another, it was held that it did not apply where one person held a mere term, or an estate in lands of copyhold tenure, in trust for another; for in such a case the person is not said to be *seised*. In such cases, also, the Equitable ownership exists separately

and distinctly from the Legal ownership, contrary to the design of the Statute.

But the decision which had the most important and extensive results in defeating the design of the Statute was that known as the decision in *Tyrrell's Case* (Dyer, 155a), which was, that where one Use is declared upon another Use, the second Use so declared is repugnant and void ; for Equity, regarding the intention of the parties, held that the Equitable or beneficial ownership vested in the person in whose favour the last Use was declared, although this Use was at law held to be void. In every case, therefore, where an Use is declared upon an Use the Equitable ownership exists distinctly and separately from the Legal ownership, contrary to the design of the Statute.

The result of this decision is, that in the only case to which the Statute applies at all, namely, where one person becomes seised of land to the Use of another, its application may be prevented by the simple expedient of interposing a merely formal limitation of an Use ; and this is, in practice, the method resorted to whenever it is desired to prevent the operation of the Statute in those cases to which it applies.

Another result of this decision is, that the meaning of the term Use has been materially altered. Prior to the Statute the term Use was synonymous with the Equitable estate or beneficial interest in the land ; but after the Statute, by virtue of the decision in *Tyrrell's Case*, it was a mere formal term or expression used for the purpose of denoting in whom the Legal estate was intended to reside, whether the beneficial interest was intended to be in that person or not.

Although the design of the Statute of Uses was thus defeated, the Statute itself had the most important effects in enlarging the power of disposition which the owner of land possessed over the Legal estate therein. For the

Statute, it must be observed, does not in any manner prohibit or restrict the creation of Uses, but merely operates upon the Use when created by uniting to it the Legal estate, which it invests with the "quality, manner, form, and condition" of the Use. The Statute, therefore, in effect made the Legal estate as malleable as formerly the Use or Equitable estate was, and (speaking generally) enabled the owner of land to deal with the Legal estate therein as freely as formerly he might have dealt with the Use or Equitable estate.

With reference to the operation of the Statute in these respects, it may truly be said to have revolutionised the methods of conveyancing.

The operation of the Statute upon dispositions of the Legal estate in land was principally twofold; (a) in the first place, it had an important effect upon the dispositions which might be made of the Legal estate; and (b) in the next place, it affected the *form* of the disposition of the Legal estate.

It is proposed to consider the effects of the Statute in these respects in detail.

(a) In the first place, as to the effect of the Statute upon the dispositions which might be made of the Legal estate.

At the common law, all limitations contained in conveyances operating *inter vivos* of Legal estates of freehold duration, were governed by the following rules:—(1.) That the right to the seisin or feudal possession must never be in abeyance; and (2) that the right to the seisin must not be shifted about from one person to another without open livery of seisin or other ceremony.

These two rules are of a distinctly feudal origin, their object being to ensure that there shall always be some ostensible tenant of the freehold liable to the lord for the services due in respect of the feud, and answerable in a real action to all persons claiming right in the land.

The practical operation of the two rules above stated was, that in a conveyance made *inter vivos*, a Legal estate of freehold duration could only be limited *in possession*, that is, so as to confer an immediate power of possession and enjoyment of the land; or *in remainder*, that is, so as to confer a power of possession and enjoyment of the land upon the regular determination of some preceding particular Legal estate of freehold duration in possession, which the conveying party at the same time parted with. On every conveyance of a Legal estate of freehold duration, therefore, it was necessary that the conveying party should presently part with the freehold in possession; for, as it was said, every conveyance of the freehold must take immediate effect.

Where the limitation was of an estate *in remainder*, the limitation might be either an *executed* limitation, that is, a limitation by virtue whereof the estate limited is immediately acquired by, and vests in, the person to whom it is limited; or an *executory* limitation, that is, a limitation of an estate to be acquired by and to vest in the person to whom it is limited, not presently, but only upon the happening of some future event. A limitation of an estate in possession was necessarily an executed limitation. At the common law, therefore, an executory limitation of a freehold estate was *only* valid when it was a limitation of an estate in remainder.

A limitation of a Legal estate of freehold to vest in the person to whom it is limited at some future time, if not preceded in the same conveyance by a limitation of a particular Legal estate of freehold, was clearly rendered void by the rules above stated; for if such a limitation were valid, either the right to the seisin would, until the happening of the event specified, be in suspense, which is contrary to the first rule; or upon the happening of the event specified, the right to the seisin would, without any livery

or other ceremony, shift away from the grantor to the grantee, which is contrary to the second rule.

And a limitation of a Legal estate of freehold to take effect in defeasance of a preceding limitation contained in the same instrument was also rendered void by the second of the rules above mentioned; for the effect of such a limitation, if valid, would be that upon the happening of the event specified, the right to the seisin would, without any livery or other ceremony, shift away from the first grantee to the second grantee. A limitation in defeasance of a preceding limitation contained in the same instrument was also invalidated by another rule of the common law, namely, that a man may not derogate from his own grant; for at the common law this principle was applied as between several limitations contained in the same instrument.

Moreover, not only were all executory limitations of Legal estates of freehold, other than those by way of remainder, void at the common law, but even an executory limitation by way of remainder, though valid in its origin, became void and failed of effect, unless the limitation was executed, and the estate limited thereby was completely acquired by and vested in the person to whom it was limited, by the happening of the event specified, either during the continuance of the particular estate, or, at the latest, at the instant of the determination of the particular estate. For if the executory limitation had been held valid, notwithstanding the determination of the particular estate before the happening of the event on which such limitation was to become executed, either the right to the seisin would, in the meantime and until the happening of the event, be in abeyance, contrary to our first rule; or it would result to the grantor, and afterwards, upon the happening of the event, without livery of seisin or other ceremony, shift away to the grantee, which is contrary to our second rule. By the determination of the particular estate, therefore,

before the estate limited by the executory limitation became vested, the limitation became void.

Thus stood the common law before the Statute of Uses with respect to limitations of Legal estates of freehold.

It is necessary now to advert to the rules of Equity, which, before the Statute of Uses, governed limitations of Uses or Equitable estates; for, as has been already shown, the effect of the Statute was indirectly to enable the Legal estate to be dealt with in the same manner in which, at the time of the passing of the Statute, the Use or Equitable estate might be dealt with.

It has already been stated that the Use or Equitable estate in land was a right not recognised by the Courts of Law; it was the creature of and was recognised only by the Court of Chancery. The Equitable estate was not the subject of tenure, nor was it of a feudal origin or nature. It, therefore, conferred no right to the seisin or feudal possession.

Now the rules which have been stated above as governing all limitations of Legal estates of freehold, related only to the right to the seisin; they had no relation to estates which conferred no right to the seisin. Limitations, therefore, of Uses or Equitable estates were not affected by these rules.

From this important difference it followed, not only that executory limitations of Uses were valid, though *not* by way of remainder, but also that no executory limitations of Uses were limitations by way of remainder.

In the first place, then, executory limitations of Uses were valid, though *not* by way of remainder. The Use or Equitable estate, since it conferred no right to the seisin, might be shifted about at pleasure from one person to another without any ceremony. An Use, therefore, might well be limited to come into existence and to vest in a person upon the happening of some future event, without being preceded in the same instrument by any limitation of

a particular estate. Even a limitation of an Use to arise and take effect in defeasance of some preceding limitation contained in the same instrument was valid; for the principle that a man may not derogate from his own grant was not, in Equity, applied as between several limitations contained in the same instrument; a limitation of an Equitable estate was regarded as a mere direction to the trustee in whom the Legal estate was vested, as to the persons for whom and the purposes for which he should stand seised of the land, which might well be, in the same instrument, revoked or varied in any given event.

Uses of the former class were termed Springing Uses; those of the latter class were termed Shifting Uses.

The event upon which an executory limitation of an Use, whether a springing or shifting Use, should take effect, might be the act of the owner of the land, or even of a stranger. In this manner an Use might be made to spring up at the will of a person designated, who was then said to have a *power* over the Use.

Not only were executory limitations of Uses valid, though not by way of remainder, but all executory limitations of Uses were, in effect, limitations not by way of remainder.

Even when a limitation of an Use to arise and to vest in some person upon the happening of a future event was preceded in the same instrument by a limitation of a particular Use or Equitable estate, the subsequent or executory limitation was not really a limitation by way of remainder. For in order that a limitation may be a limitation by way of remainder, it is essential that it should be so connected with or related to some preceding limitation of a particular estate contained in the same instrument, that the estate limited by the subsequent limitation *must necessarily*, if at all, take effect in possession immediately upon the regular determination of the particular estate limited by the preceding limitation, and neither sooner nor later; an essential

relation which follows from the very definition of an estate in remainder, as "a remnant of an estate in lands or tenements expectant upon a particular estate created together with the same at one time" (see *Co. Litt.*, 143a).

Now a limitation of an Use to be acquired upon the happening of some future event always took effect according to the intention of the parties, upon the happening of the event specified, and although a particular estate limited by a preceding limitation might have determined at some previous time (see *Hopkins v. Hopkins*, Cases *temp.* Talbot, 44; 1 *Atkins*, 590; *Chapman v. Blisset*, Cases *temp.* Talbot, 145). The limitation, therefore, lacked that connection with or relation to the preceding limitation which is of the essence of a limitation by way of remainder.

At the time of the passing of the Statute of Uses, therefore, limitations of Uses were free from the trammels of those feudal rules which governed all limitations of Legal estates of freehold duration; and this is particularly seen in the freedom with which Uses might be limited to arise and to vest in any person upon the happening of a future event.

The Statute of Uses, as has been already shown, did not prohibit or restrict the creation of Uses, but simply operated upon the Use when created by uniting to it the Legal estate, which it imbued with the "manner, form, and condition" of the Use.

After the Statute, therefore, Uses might be limited in the same modes as before the Statute, and, therefore, executory limitations of Uses *not* by way of remainder were valid after the passing of the Statute as before. But since the Statute immediately annexed the Legal estate to the Use, it followed that the Legal estate itself, even of freehold duration, might indirectly, and through the medium of a formal limitation of an Use, be limited in the same modes as the Use itself might be limited. Executory limitations

not by way of remainder of Legal estates of freehold, therefore, became valid, even in a conveyance operating *inter vivos*, provided that such limitations were in form declarations of Uses to arise out of the seisin in the land of another person than those in whose favour such Uses were declared.

After the passing of the Statute of Uses, therefore, a limitation of a Legal estate of freehold to vest in the person to whom it is limited at some future time was valid, although not preceded in the same conveyance by any limitation of a particular Legal estate of freehold, provided that such limitation was in form a declaration of an Use. So, also, after the passing of the Statute, a limitation of a Legal estate of freehold to take effect in defeasance of a preceding limitation contained in the same instrument was valid, provided that the limitations were in form limitations of Uses. So, also, after the passing of the Statute, the destination of the Legal estate in land might be made dependent upon the will of a person designated, whether the owner of the land or a stranger, by means of a common law conveyance of the land to such Uses as the person designated should, in the manner prescribed, appoint; for as soon as an Use was raised by an appointment made by the person designated in the manner prescribed, the Statute annexed the Legal estate to such Use.

This was the most important effect of the Statute of Uses, that it enabled the owner of land to deal with the Legal estate therein in modes in which he could not have dealt with it at the common law, namely, by validating executory limitations *not* by way of remainder.

It has been laid down, generally, that the effect of the Statute was, that the Legal estate might, indirectly and through the medium of a formal limitation of an Use, be limited in the same modes as, before the Statute, the Use itself might be limited.

To this general rule, however, two exceptions have been introduced by judicial decision.

The first exception is, that if an executory limitation of an Use be such that if it had been a common law limitation and not a declaration of an Use, it would have been construed as a limitation by way of remainder; in such a case, notwithstanding the interposition of a declaration of an Use, and notwithstanding that an Use could not before the Statute be limited by way of remainder, the limitation must be construed as a limitation by way of remainder; such a limitation was, therefore, prior to the recent enactments contained in the 8 & 9 Vic., c. 106, s. 8, and the 40 & 41 Vic., c. 33, liable to fail by the determination of the particular estate before the happening of the event upon which the estate limited by the subsequent executory limitation was to vest. This doctrine was established in *Chudleigh's Case*, *Dillon v. Freine* (1 Rep., 120; Popham, 70; 1 Anderson, 309).

A corollary to the rule in *Chudleigh's Case* is, that where an executory limitation can be construed as a limitation by way of remainder, it shall be so construed, and shall not be construed as a limitation not by way of remainder (see *Carwardine v. Carwardine*, stated in Fearn's Cont. Rem., p. 302).

The second exception is, that if an executory limitation of a Legal estate of freehold be preceded in the same instrument only by a limitation of a term, such limitations, though limitations of Uses, and though such limitations of Uses were clearly valid before the Statute, must be governed by the same rules as if they were common law limitations, and not limitations of Uses. The result of this is, that the subsequent executory limitation is void, if contained in a conveyance operating *inter vivos*, as offending against the feudal rules previously stated. This doctrine was established in the cases of *Adams v. Savage*, 2 Salkeld, 679; 2 Ld.

Raymond, 854; and *Rawley v. Holland*, 22 Viner's Abr., 189.

It seems difficult to justify either of these exceptions upon principle.

Before leaving this branch of the subject, it should be observed that the effect of the Statute of Uses in validating executory limitations not by way of remainder of Legal estates of freehold, was confined to conveyances made *inter vivos*. The feudal rules above stated were not applied to limitations contained in a will; consequently, in a will, an executory limitation not by way of remainder was always valid, even though it was a direct limitation of the Legal estate without any interposition of an Use; indeed, it is a much debated question whether the Statute of Uses applies to, or executes Uses declared by, a will.

Besides indirectly validating executory limitations *not* by way of remainder of Legal estates of freehold, the Statute of Uses has had the effect of enlarging the power of disposition which the owner of land possesses over the Legal estate therein in other respects also.

Thus, at the common law, the owner of land could not directly convey an estate therein to himself, the rule being "*nemo potest esse et agens et patiens*." And, husband and wife being considered in law as one and the same person, it followed that neither could directly convey to the other. If, therefore, the owner of land desired to convey some new estate therein to himself, or to convey an estate therein to his wife, it was necessary for him to make a conveyance to a stranger, and to obtain a reconveyance from such stranger to himself, or to his wife (as the case might be). In Equity, however, before the Statute of Uses, a person might have declared an Use in his own favour, or in favour of his wife. Consequently, after the passing of the Statute of Uses, the owner of land might, by one conveyance, convey a new estate therein to himself, or convey an estate therein to his

wife, by the simple expedient of declaring in a common law conveyance to a stranger Uses in favour of himself or his wife.

Again, at the common law, in order that an estate might vest in several persons as joint tenants, it was necessary that it should vest in them all at one and the same instant. But it is said by Lord Coke, that by means of limitations of Uses an estate may vest in several persons as joint tenants at several times. The explanation of this, however, appears to be that the limitation operates as a limitation of a shifting Use, so that, upon a new joint tenant coming into existence, the Use, and with it the Legal estate, shifts away from the former joint tenants, in whom it then resided, and vests in the former joint tenants jointly with the new joint tenant.

Having considered the effect of the Statute upon the dispositions which might be made of the Legal estate in land, we now proceed to consider

(b) The effect of the Statute upon the *form* of the disposition of the Legal estate.

At the common law, prior to the Statute of Uses, a conveyance of a Legal estate of freehold duration always included some *form* or ceremony. If the estate conveyed was an estate in possession, the form commonly employed was *livery of seisin*, that is, a delivery to the alienee of the seisin or feudal possession of the land; though an estate of freehold in possession might have been conveyed by means of a lease and an actual entry by the lessee, followed by a release by deed from the lessor to the lessee thus in possession. If the estate to be conveyed was an estate in remainder or reversion expectant upon some particular estate, the appropriate form was a deed of grant followed by the attornment to the grantee of the particular tenant. And whether the estate to be conveyed was an estate in possession or an estate in remainder or reversion, it might

be conveyed by matter of record, that is, a fine or recovery.

In Equity, on the other hand, prior to the Statute of Uses, an Use or Equitable estate might be created or transferred without any form whatever, or (according to the nature of the consideration) by a simple deed; provided in either case that the transaction was founded upon the appropriate consideration. For an Use might be created, that is, severed from the Legal estate, not only upon the occasion of a common-law conveyance of the Legal estate, by means of a declaration of Uses superadded upon such common law conveyance; in which case, of course, the transaction, viewed as a whole, included the appropriate common law formalities; but also independently of any conveyance of the Legal estate; provided in that case, that the transaction was founded upon a particular consideration, namely, the consideration of money or money's worth, or that of natural affection or marriage.

When the transaction was founded upon the consideration of money or money's worth, no form whatever was required. The Use passed to the alienee without any writing, livery, entry, or other form or ceremony whatever. Such a conveyance of the Equitable estate was termed a Bargain and Sale of the Use.

When the transaction was founded upon the consideration of natural love and affection or marriage, it was necessary that a deed should be employed; but upon the execution of the deed the Use passed to the alienee without livery or any further ceremony. Such a conveyance of the Equitable estate was termed a Covenant to Stand Seised to Uses.

After the passing of the Statute of Uses, Uses might still be created in the same modes as before the Statute; and, when created, the Statute annexed the Legal estate to the Use. After the Statute, therefore, an Use might still be created by a Bargain and Sale, founded upon the con-

sideration of money or money's worth, without any form or ceremony whatsoever ; or by a Covenant to Stand Seised, founded upon the consideration of natural affection or marriage, without any form other than a simple deed ; and in either case the Statute annexed the Legal estate to the Use so created. The result was that, indirectly and through the operation of the Statute, Bargains and Sales and Covenants to Stand Seised became conveyances of the Legal estate ; and the Legal estate itself might be conveyed with no other ceremony than that of a simple deed, or even, if the consideration for the conveyance were that of money or money's worth, without any form or ceremony whatsoever.

This result of the Statute of Uses seems to have been quickly perceived by the Legislature ; for, by an Act passed in the same year as the Statute of Uses, namely, the twenty-seventh of Henry VIII., c. 16, commonly called the Statute of Enrolments, it was enacted that no estate of inheritance or freehold in any lands, tenements, or hereditaments, should be conveyed, nor any Use therein created by any bargain and sale thereof, unless such bargain and sale were by deed indented and enrolled within six months after its date in one of the Courts of Record at Westminster, or with the Clerk of the Peace for the County in which the lands lie.

After this Statute a Bargain and Sale of an estate or Use of inheritance or freehold ceased to be a formless conveyance, and required to be perfected by a deed and enrolment. The Statute, however, had no application to bargains and sales of estates or Uses of less than freehold duration, and such bargains and sales might still be made without the employment of any form. This construction of the Statute, coupled with the desire to avoid the ceremony of enrolment, led to the introduction of a compound conveyance, whereby a Legal estate of inheritance or freehold might, in effect, be

conveyed, without either the common law ceremony of livery, entry, attornment, or matter of record, or the Statute ceremony of enrolment.

This conveyance was the celebrated conveyance by Lease and Release, which for a period of three centuries after the passing of the Statute of Uses was the common assurance of the realm. It consisted of two parts :—

The first part was a bargain and sale, founded upon some pecuniary consideration, usually nominal, for a term, usually one year. This bargain and sale, where the conveying party had an estate of freehold (and to such a case only was the conveyance by Lease and Release applicable), transferred to the bargainee, without any form or ceremony, an Use for the term expressed, which the Statute of Uses converted into a Legal estate.

The intended alienee having thus, without any entry, acquired a term in the lands was competent, according to the common law doctrine, to receive an enlargement of his estate by a simple deed of Release. The second part of the conveyance was, accordingly, a common law conveyance to the bargainee of the reversion in fee simple expectant upon his term; this conveyance was made by a simple deed of Release, which operated by way of enlargement of the previous estate of the releesee.

The conveyance by Lease and Release, therefore, depended for its operation on the Legal estate, partly upon the Statute of Uses and partly upon the common law.

The conveyance by Lease and Release continued to be the common assurance of the realm down to the year 1841, when the Statute 4 and 5 Vic., c. 21, was enacted, whereby a simple deed of Release, if purporting to be made in pursuance of the Act, was made as effectual for the conveyance of freehold estates as a Lease and Release, although no bargain and sale of a term or lease had been executed. And in the year 1845, a common law conveyance,

which in its origin was applicable only to the creation and transfer of *incorporeal* hereditaments, namely, a Deed of Grant was, in effect, substituted for the old conveyance by Lease and Release, as the common mode of conveying freehold estates, by virtue of an enactment contained in 8 and 9 Vic., c. 106, s. 2, that all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery.

Since this enactment, the Statute of Uses has, in practice, ceased to affect the *form* of conveyance of the Legal estate, that is, the ceremony with which such conveyance requires to be perfected.

The effect, therefore, of the Statute of Uses upon the *present* system of conveyancing may be said to consist in this, that it renders valid executory limitations NOT by way of remainder of Legal estates of freehold, such limitations being void at the common law in an instrument operating *inter vivos*.

The question whether it is desirable to repeal the Statute of Uses depends upon what it is proposed to substitute in its place.

If it be proposed, in repealing the Statute, to enable the Legal estate in land to be dealt with directly as freely as, by virtue of the Statute, it may be dealt with indirectly and through the medium of a limitation of an Use; if, in short, it be proposed, when repealing the Statute, to repeal also those feudal rules which we have referred to, there can be no doubt that a repeal of the Statute is desirable. Such a repeal would be beneficial, not merely in sweeping away a highly artificial and extremely complex branch of law, which still occasions doubt and difficulty to the student and the theorist, and sometimes also to the practitioner, but also in abolishing those rules established in *Archer's Case* (1 Rep., 66), in *Chudleigh's Case* (1 Rep., 120,

Poph. 70), and in *Adams v. Savage* (2 Salkeld, 679), and *Rawley v. Holland* (22 Vin. Abr. 189), which have so often defeated the intentions and the expectations of parties. For these rules, as has been already shown, flow directly from the old feudal rules above referred to.

If, however, it be not proposed in repealing the Statute of Uses to enable the owner of land to deal directly with the Legal Estate therein as freely as, by virtue of the Statute, he may now deal with it indirectly, then the question as to the desirability of repealing the Statute raises very different considerations.

As has been already shown, the power of an owner of land to deal with the Legal estate therein by means of executory limitations not by way of remainder depends upon the Statute of Uses. The result, then, of a simple repeal of the Statute of Uses, without substituting any system in its place, would be that an owner of land desiring to make a settlement thereof, would either be confined to such limitations as were valid at the common law, that is, to executory limitations by way of remainder, with their liability to fail by the determination of the particular estate before the vesting of the estate in remainder; or he would be compelled to vest the Legal estate in trustees and make his settlement a merely Equitable settlement.

In the latter case, the repeal of the Statute would have served no beneficial end but have created some inconvenience, namely, the entire severance of the Legal ownership from the beneficial interest.

In the former case, the question of the repeal of the Statute opens up the question of land settlement, a great question, which may be reserved for future consideration.

W. H. UPJOHN.

III. — THE ABOLITION OF CANVASSING AT PARLIAMENTARY ELECTIONS: WITH A DRAFT BILL.

SAVING those who find in the practice of canvassing the means of replenishing their exchequer, of asserting their importance, of bringing themselves before the public, or of laying the candidate or their party under obligation to them, few persons in these days would venture to say a word in favour of the practice. I shall, therefore, devote but a short space to discussing the advisability of abolishing it, merely giving a *résumé* of some of the principal reasons for its abolition. These may be stated thus:—

Canvassing places upon candidates an unnecessary, disagreeable, and heavy task, subjecting them to much unpleasantness, and even to insult.

It occasions great waste of time—sometimes extending to several weeks—on the part of hundreds of canvassers; and places them in an undesirable relation both to the candidate and to the electors.

It is a great annoyance and inconvenience to electors—is too often a direct attack upon, and very detrimental to, their veracity; and, accordingly, has a most demoralising effect.

It is the means of inducing to vote, when otherwise they would not, the utterly indifferent and the grossly ignorant, those who vote, not from conviction, but from some selfish motive, and who, by abstaining from voting at all, would serve their country in the only way in which, perhaps, they are capable of serving it. And when these are sufficient to turn an election, behold the constituents of the member!

It considerably increases the expenses of elections; and is often a mere indirect form of bribery. Mr. Hankey

(*Times*, 23rd April, 1880, p. 11, col. 4), computes the saving that the abolition of canvassing would effect at nearly one and a half millions.

It opens a door to the easy accomplishment, combined with difficulty of detection, of bribery and intimidation, which it is in vain to attempt to deal with as ends whilst the means are permitted.

It is a direct infringement of, and entirely antagonistic to, the spirit of the ballot, as well as of individual liberty. To give a man the means of voting secretly, whilst you leave him exposed to influence before and after; whilst you suffer him to be bound by his word to do, and to be subject to any amount of inquiry and pressure as to his actions afterwards, is to trifle with him; to wink at untruth, insincerity, and promise-breaking—detrimental to all good government—and to perpetuate evils, which, by the unthinking, are attributed to the ballot, but which are really the effect of that half-heartedness which prefers to ameliorate an evil rather than undertake to cleanse the Augean stable. It has been well said by the writer already quoted (*Times*, *loc. cit.*): “It were better to put an end to the Ballot Act than to countenance the system of canvassing” under it.

It is either useless or injurious. If a voter has sufficient interest in his country's welfare, and sufficient intelligence to render his vote of value to his country, he needs no canvassing to urge him to do that duty to it which is his pleasure—with such an one canvassing is useless. If, on the other hand, he is wanting in the adequate interest and intelligence, and requires the suggestive money present, the festive gathering, the seductive recognition, the persuasive flattery, or any other means of inducement, which leaves his opinions unformed or unchanged, his vote is an injury to his fellow-electors and to his country, and in this case canvassing is distinctly injurious.

Under the Ballot, canvassing is for the most part ineffectual, *i.e.*, its advantage as a guide to the probable result of the poll, if not entirely lost, is so diminished as to be of little practical value. Where effectual, its result is unofficially to antedate the election as officially fixed.

It is the occasion of many unauthorised promises being made and pledges taken on behalf of candidates, which they are subsequently either unable or unwilling to redeem.

To abolish canvassing would be :—

To strike at the roots of wire-pulling and of all the evils that result from the “caucus” and its kindred.

To regulate elections by opinion and principle, instead of by objectionable and sinister influences, be they what they may.

To bring into office ability instead of plutocracy, the upright rather than the schemer, the orator before the successful suitor.

To make it the interest of candidates to educate politically their constituents, rather than to worry them like sheep or coax them like dullards.

To raise the standard of the electors in all matters pertaining to government, and in turn to raise the standard of members.

To induce men to come forward who now will not stoop to conquer at the sacrifice of their moral dignity.

To make it the business of constituents to choose a candidate instead of candidates choosing a constituency.

In short, to exterminate all the evils which attend the present practice. This enumeration of the evils to be remedied and of the advantages which would result therefrom may suffice, it is hoped, to convince anyone who has the national progress at heart, that the task is worth attempting.

It may be well, however, to set forth some proofs of the practicability of abolition. In point of fact, the chief, if not

the only, argument in favour of the present state of affairs is that old bugbear which always, in the absence of reasons, does duty for them, when any change is proposed—"it is impracticable." But why should it be impracticable? The mere allegation of impracticability, which weed-like springs up always and everywhere, is begging the question.

Are there no acts which constitute canvassing? Or is the English language so poor that words cannot be found to represent them? Or are they solely mental acts, purely subjective, which, lacking all objective manifestation, defy detection? Or are they so advantageous that no legal motives can be found sufficiently strong to counteract them? In other words, is the good which a man derives from so acting greater than all the evils which are practically at the disposal of the Legislature? Will someone be found bold enough to undertake to prove the affirmative to any one of these questions? If not, how can abolition be impracticable? Difficult it may be; but difficulties may be, and continually are, overcome; they should rather incite than deter. "Mountains may be removed by earthquakes," and I venture to affirm that the difficulty in dealing with bribery, treating, and undue influence in conjunction with canvassing, will be found far less than in dealing with them alone—*i.e.*, so long as canvassing, the stepping-stone to them all, is permitted.

The best answer to the objection of impracticability appears to me to be to show how it can, as a matter of fact, be met. I have, therefore, drafted a short Bill, which I venture to submit, as calculated to effect the desired object. It is for those who believe in the impossibility of attaining that object, to show not merely wherein the bill is defective, but that the defects are irremediable. I cannot, of course, hope, much less expect, that my scheme should be free from important defects. But all my case requires is that such defects should admit of a remedy. Let others better

qualified than myself apply it. If it should be held that I have in any way, however slight, offered some feasible suggestions for the successful grappling with this difficulty, how much more readily may it be conceived to be within the grasp of the collective wisdom of Parliament?

In the Bill, I have endeavoured to answer effectually the questions suggested above. In clause 4 I attempt to define canvassing by an exhaustive enumeration of the acts which constitute it. This is probably the most difficult part of the task, and it is this part of the Bill that most needs attention and criticism. It would have been far easier to have declared *canvassing abolished*; but that seemed to be to shirk the question—to impose upon the Courts the proper work of the Legislature.

The point from which I have attacked canvassing, is not from what the person canvassed does, for there may be canvassing without the action canvassed for being consummated; nor yet merely from what the canvasser does, for then it were difficult to distinguish acts that do not require to be prohibited from those that do, and it is from this point of view that those who cry *impracticable* always regard it. Take, for instance, this statement by Mr. Agar-Ellis (*Times*, 22nd April, 1880, p. 12, col. 4), that “public speaking is simply a collective canvass!” It is from what the canvasser requires the canvassed to do that I have endeavoured to grapple with the difficulty. The whole principle consists in this, that whilst, on the one hand, a voter shall not be prevented from voluntarily promising his vote, or stating for whom he intends to vote, being left perfectly free to do so or not, just as he pleases; on the other hand, no one shall be allowed to interfere with that freedom in the smallest degree, as by asking him to promise, which promise, should it comprise no further influence, may yet prevent him changing his course of action, should he be

led to change his views. And thus any charge of infringing individual freedom seems to me to be at once disposed of.*

The next step, after defining the offence, is to apply a sanction sufficiently strong to induce compliance with the law in order to escape the penalty, rather than by committing the offence for the sake of the advantages it offers to run the risk of incurring the penalty. To ascertain an appropriate and effective sanction, we must inquire what are the motives, or the desires, or the advantages sought, which induce the individual to act contrary to the proposed law, and then apply sanctions sufficient to counteract such seducing motives, and to induce him to act in accordance with such law. Let us take as an instance of the way in which an appropriate penalty is to be aimed at, section 5—canvassing by the candidate. Here the corrupting motives are all those wishes which go to make up (not to subdivide further) the desire to write M.P. after his name. We at once set off against this as a tutelary motive the fear of having the election rendered void (section 1). And since the duration of the anticipated good is the length of that Parliament, the evil is made of as long duration (section 2). But the evil is wanting both in certainty and proximity—it is uncertain whether the election will be avoided though corrupt, for it may be that no one will petition, &c., and the being elected is the main consideration, while the possibility of its being avoided is a subsequent affair, and should the candidate not be elected, the offence would be incapable of punishment unless some further penalty were added. The punishment must accordingly be increased in quantity or magnitude, in order to counteract this double deficiency. For this end, as well as from other considerations, the penalties of section 4 are made to apply to *every* person. Moreover, the second of

* Is not, however, the "individual freedom" of the candidate here infringed?
—Ed.

these clauses is intended to have the effect of reducing the want of certainty of incidence of the penalty, by making it the interest of others to assist in maintaining the law by informing against offenders. By the same method the other penalties should be arrived at.

Before coming to the Bill, I will offer a few words by way of further explanation.

Preamble.—I have adopted a preamble in order, as Bentham would say, to form the moral sanction, or by branding the practice, for weighty reasons concisely summarised, with the disapprobation of the Legislature, to induce public opinion—which would be the most effective preventive—to follow in the same wake.

Clause 2.—A similar duration to that of other election Acts as extended seems advisable. And here I will take the opportunity of stating that though I believe such a measure as suggested would be beneficial, that is not in my opinion the best way of dealing with the evil. The whole body of election law requires to be dealt with as such.

The few scores of statutes require consolidating, many of them (*e.g.*, the Ballot Act) require to be amended and made to work harmoniously one with the other; the product would then be capable of being considerably reduced in bulk. Moreover it would seem necessary to extend the remedy to municipal elections, but from a regard to conciseness and clearness I have limited the scope of the Bill to Parliamentary Elections.

The principle of the Bill is shortly as follows:—

Clause 3.—Several frequently recurring terms having for the sake of brevity and perspicuity been defined,

Clause 4.—Proceeds to render certain acts therein enumerated offences involving liability to certain penalties, by whomsoever committed, and

Clause 5.—Adds still further penalties to such acts when committed by a candidate. A proviso exempts from the

penalties against undue influence all such acts as have for their object the legitimate end of convincing the judgment ; and canvassing is made to come within the Acts regulating election petitions and proceedings to recover penalties.

Clause 6.—Renders canvassing ineffectual by striking off a vote for every canvassed vote.

Clauses 7 and 8.—Constitute the paying or receiving payment for canvassing bribery within the Act dealing with that offence.

Clauses 9 and 10.—Deal with certain special cases of evidence.

The Bill might have been drawn more concisely, but from a desire to render it as free from technicality and as intelligible as possible, as well as from a regard to the advice of Sir Henry Thring, I have sacrificed brevity to clearness—"Law," says the Parliamentary Counsel, "is made for man and not man for law; it is too often forgotten by lawyers and draughtsmen that the greater number of Acts of Parliament contain rules of conduct to be observed by illiterate persons and to be enforced by authorities unacquainted with technical language."

THE CANVASSING ABOLITION ACT, 1881.

Arrangement of Clauses.

1. Short Title.
 2. Commencement and Duration.
 3. Definitions.
 4. Canvassing (common).
 5. Canvassing by Candidate.
 6. Vote to be Struck Off.
 7. Bribing to Canvass.
 8. Receiving Bribe for Canvassing.
 9. Evidence of Influence.
 10. Evidence of Sanctioning.
-

44 & 45 Vict.]

A BILL INTITLED

THE CANVASSING ABOLITION ACT, 1881.

WHEREAS the practice of canvassing at Parliamentary Elections is burdensome to candidates, debasing to electors, an infringement of the principles of the Ballot, and a covert for corrupt practices, and it is therefore expedient to abolish such practice:

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. *Short Title.*—This Act may be cited as “The Canvassing Abolition Act, 1881.”

2. *Commencement and Duration.*—This Act shall come into operation on the day of , 1881, and shall continue in force until the

Definitions.

3.—In this Act—

“*Agent.*”—The term “Agent” means any person engaged by a candidate to canvass for him, or whose canvassing has been sanctioned by a candidate, or any person being the wife or child or parent of a candidate, or any person proved to have been an election agent.

“*Candidate.*”—The term “Candidate” means any person elected to serve in Parliament at an election, and any person who has been nominated as, or declared himself a candidate at an election.

“*Canvass.*”—The term “Canvass” means to do any of the acts enumerated in section 4.

“*Canvass-book.*”—The term “Canvass-book” means any note or memorandum of not less than three acts of canvassing.

“*Do.*”—The term “do” includes to forbear from doing.

“*Promise.*”—The term “promise” includes to bind oneself in any way.

“*Vote.*”—The term “Vote” includes to abstain from voting.

“*Voter.*”—The term “Voter” means any person who has, or claims to have a right to vote in the election of a member to serve in Parliament.

Enactments.

4. *Canvassing, Acts of.*—Every person who shall directly or indirectly solicit or persuade, or endeavour to persuade any voter—

- (1.) To promise to vote for any candidate ; or
 - (2.) To state for which candidate he intends voting ; or
 - (3.) To promise to disclose after the election for which candidate he shall have voted ; or
 - (4.) To do any act to which voting for any candidate is annexed as a condition or obligation ;
- or solicit, or persuade, or endeavour to persuade any person who has any influence over a voter ;
- (5.) To promise that such voter shall vote for any candidate ; or
 - (6.) To state for which candidate such voter intends voting ; or
 - (7.) To promise to disclose after the election for which candidate such voter shall have voted ; or
 - (8.) To do any act to which voting for any candidate is annexed as a condition or obligation ;
 - (9.) Or make, or cause to be made, a canvass-book, or be in possession thereof without being able to account for the same, Shall be deemed guilty of canvassing, and the following consequences shall ensue, that is to say :

Penalties.—1. He shall be incapable of being registered as a voter, and of voting at any election in the United Kingdom during seven years next after the date of his being found guilty ; and

2. He shall be liable for each act of canvassing to forfeit the sum of £50 to any person who shall sue for the same, together with full costs of suit, or, in default thereof, to be imprisoned for each offence for any term not exceeding three months, such terms of imprisonment to run successively.

Provided that no person shall be guilty of canvassing under sub-sections (2) and (6) of this section unless at least three cases of such canvassing, either of the same kind, or partly of one and partly of the other, shall be proved against him.

Canvassing shall be deemed an "undue influence" within the meaning of "The Corrupt Practices Prevention Act, 1854" (17 & 18 Vict., c. 102), and any penalty hereby imposed shall be deemed a penalty under that Act, and shall be recoverable in manner mentioned in section 9 of that Act.

5. *Canvassing by Candidate.*—*Acts.*—Every candidate who shall, directly or indirectly, either personally or by agent, do any of

the acts mentioned in section 4 of this Act shall be deemed guilty of canvassing, and the following consequences, in addition to any others under this Act, shall ensue, that is to say:—

Penalties.—1. His election, if he has been elected, shall be void; and

2. He shall be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his being found guilty; and

3. He shall be incapable during the said period of seven years of holding any municipal office, or of holding any judicial office, or of being appointed and of acting as a Justice of the Peace.

Canvassing shall be deemed to be a “corrupt practice” within the meaning of “The Parliamentary Elections Act, 1868” (31 & 32 Vict., c. 125).

Proviso.—Provided that nothing in this Act shall prevent any person from delivering or otherwise publishing addresses to persuade voters to vote for any candidate which are not intended nor calculated to overpower the volition without convincing the judgment.

6. *Vote to be struck off.*—Where, on the trial of an election petition, it is proved that any voter who has voted had been canvassed there shall, on a scrutiny, be struck off from the number of votes appearing to have been given for the candidate for whom such voter was canvassed, one vote for every such voter canvassed.

7. *Bribing to Canvass.*—Every person who shall, directly or indirectly, personally or by agent, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure, or to endeavour to procure any money, or valuable consideration, or any office, place, or employment to or for any other person to induce him to canvass, or in consideration of his canvassing or having canvassed, shall, in addition to any liability under this Act for canvassing, be guilty of bribery within section 2 of “The Corrupt Practices Prevention Act, 1854” (17 & 18 Vict., c. 102), and shall be punishable accordingly as for an offence against the provisions of that Act.

8. *Receiving Bribe for Canvassing.*—Every person who shall, directly or indirectly, by himself or any other person on his behalf, receive, agree, or contract, for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person for canvassing, for agreeing to

canvass, or for having canvassed, shall, in addition to any liability under this Act for canvassing, be guilty of bribery within section 3 of "The Corrupt Practices Prevention Act, 1854" (17 & 18 Vict., c. 102), and shall be punishable accordingly as for an offence against the provisions of that Act.

Evidence.

9. *Of influence.*—Proof that a person was in the relation of wife, parent, child, or master of such voter, shall be sufficient evidence of influence over a voter within section 4 of this Act.

10. *Of sanctioning.*—The fact that a candidate has knowledge that a person is canvassing for him, and does not forthwith, upon acquiring such knowledge, prohibit such person from so canvassing, and proceed against him for any further act of canvassing after he shall have been so prohibited, shall be sufficient evidence of the canvassing being sanctioned by such candidate to constitute the person so canvassing an agent.

GEO. G. GRAY.

[Paid canvassing is undoubtedly doomed, and in order to render its abolition effective, it may possibly be found expedient to also prohibit canvassing by any one but the candidate. But to forbid the candidate himself to ask a voter for his suffrage, seems to be an undue curtailment of the liberty of the subject, and when sanctioned by penalties, such as proposed in the draft Bill, could hardly fail to make the intercourse between a candidate and the constituency strained and uncomfortable. It would seem also to be unnecessary, inasmuch as the evil doings at elections are invariably the work of third parties—agents or partisans of the candidates—never of the candidates themselves. We are glad to see, since writing the above, that the Attorney-General has so promptly taken in hand the subject of Corrupt Practices at Elections, including Paid Canvassing.—Ed.]

IV.—"EXTRA-TERRITORIAL" OATHS.

IN the month of February, 1880, a somewhat curious case came before Sir James Hannen, in the Probate Division. Prince Henry LXIX. of Reuss-Köstritz, in the Empire of Germany, who died in 1878, had made and duly executed his last will and testament, with ten codicils thereto, according to German law; and appointed Otto Theodore von Seydewitz, his nephew, and President of the German Imperial Parliament at Berlin, executor thereof. The will

was proved in the Court of Gera, in Germany, but it was necessary that probate of it should also be obtained in England, to realize a trust fund which was invested in the name of the deceased, as trustee for his wife, whose will had been proved in England. The necessary papers for the purpose were prepared in this country and forwarded to Germany, but were returned imperfectly executed. Fresh sets of papers were then forwarded to the executor, and his attention was specially called to the fact that by the law of England and the practice of the English Court, he should make the usual affidavit required of applicants in such cases, unless he had a conscientious objection to the taking of an oath. The papers were, however, again returned, accompanied merely with an affirmation, which ran as follows:—

"I, Otto Theodore von Seydewitz, late Governor-General of Würzburg, and President of the German Imperial Parliament at Berlin, &c., the nephew of the deceased, solemnly declare and affirm, and say that I believe the written paper hereto annexed and marked by me to be an official copy under seal of the Court of Gera of the true and original last will and testament, with ten codicils thereto, of the deceased, &c."

This affirmation was made before Mr. Herman Herbert, British Vice-Consul at Breslau, but there was nothing to show that the affirmant had a conscientious objection to the taking of an oath. The question raised in this case, which was several times under the consideration of the Registrars, was whether such a declaration was admissible in evidence, in support of the application for the reception of the papers for a grant of probate of the will and codicils, in this country.

Sir James Hannen decided that by the law of England, speaking generally, no fact could be proved before a judicial tribunal otherwise than by the statement of a witness, under the sanction of an oath, save in the particular cases excepted by Statute, and that the applicant had not shown that he

came within the only exception possible in this instance, viz., Section 20 of the Common Law Procedure Act, 1854.* He therefore rejected the application, at the same time observing that from papers which were deposited at the Registry it appeared, although it was not proved, that in Germany voluntary oaths were illegal, and that no person could administer a voluntary oath to a German subject in Germany. Further, that the section of the Statute above referred to was intended for the relief of persons who had a conscientious objection to the taking of any oath, but that in the above case the applicant had not stated that he had such scruples; that the English Legislature is entitled to impose what conditions it may think expedient in the making of decrees by English tribunals; and, that if this condition should work hardship on a litigant, or witness, who may be forbidden by the law of his own country to comply with it, the English tribunal could not obviate this hardship by setting aside the law which it sits to administer. The grant of probate was, therefore, refused. That the Vice-Consul at Breslau had authority by the law of England, to administer an oath in this case to the executor of Prince Henry, there can be no doubt. The Statute 18 and 19 Vict., cap. 42, amending the 6th Geo. IV., cap. 78, enabling every British Ambassador, Envoy, Minister, Chargé d'Affaires, Secretary of Embassy, or of Legation, Consul-General, Consul, Vice-Consul, Acting-Consul, Pro-Consul, or Consular

* "If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling, from alleged conscientious motives to be sworn, it shall be lawful for the Court or Judge, or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to take his or her solemn affirmation or declaration in the words following:—'I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare, &c.,' which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form."

Agent, exercising functions in any foreign place, whenever he shall be thereto required, and whenever he shall see necessary, to administer in such foreign country or place, any oath, or to take any affidavit, or affirmation, from any person whomsoever. The Statute also provides that such oath, affidavit, or affirmation shall be as good, valid, and effectual, and of like force and effect, to all intents and purposes, as if such oath, affidavit, or affirmation had been administered, sworn, or affirmed before any Justice of the Peace in the United Kingdom. But it is important to note that prior to the passing of the 6th Geo. IV., cap. 87 (which contains a similar provision, but refers only to some of the above-mentioned officials), Lord Eldon refused to avail himself of a foreign affidavit, on the ground that if false, perjury could not be assigned on it.* And in another case, Lord Ellenborough decided that a person making a false affidavit abroad could not be indicted specifically for the crime of perjury in this country.† And in a case heard about two years ago by Sir George Jessel, the Master of the Rolls, it was very seriously questioned by that learned judge, whether perjury would lie for false statements made on oath before a British Consul abroad.

The reason why oaths administered abroad by foreign Consuls should not, if falsely taken, be liable to the penalties of perjury, appears to be that no act can be an offence against the *lex loci* unless it be considered an offence by that law. Crime is local; and to render the act of false swearing perjury, such false swearing must have been committed in the course of a judicial proceeding, or before a competent authority empowered by the *lex loci* to administer an oath. Where jurisdiction is wanting on the part of the administrator of an oath, there is no competent authority to administer an oath, and there is

* *Musgrave v. Medex*, 19 Ves. 651.

† *O'Mealey v. Newell*, 8 East, 372.

no sanction of the State within whose territory such oath is administered. If a State empower a foreign Consul to administer an oath, such oath would be binding *in foro loci*, and it is submitted that perjury would be punishable in such instance not by the State of the foreign Consul, but by the State where he was exercising his consular functions.

If a person making a false affidavit, to be used in an English Court (and such affidavit has been administered by a British Consul, authorised no further than by a British Act of Parliament) is punishable at all, he is punishable, when he comes within British jurisdiction, for a misdemeanour in procuring an English Court to act upon the credit of a false and fraudulent voucher. A person injured by such affidavit would, under the above circumstances, not be without his remedy, nor would the Court be without due means of punishing in respect of the abuse and contempt committed against its authority.*

So strongly has the proposition concerning the territorial character of the crime of perjury been entertained in Prussia, that in November, 1876, the Minister of Justice issued directions, that no foreign consul in Prussia should administer any oath, or take any affidavit.

Again, by the law of Switzerland, oaths are abolished, and are replaced by affirmations.

Without discussing the laws of other foreign countries, it is evident that, at least, in the two States above-mentioned, the *lex loci* not only does not sanction, but absolutely forbids a foreign consul to administer an oath.

Referring again to the 18 and 19 Vict., cap. 42, it will be noticed that this Statute contains a new provision not to be found in the older Act (6 Geo. IV, cap. 87), which it amended. The provision is as follows:—

Sec. 4. "Any person knowingly and wilfully making any false oath, affidavit, or affirmation before any person having

* *O'Mealey v. Newell ut supra.*

authority to administer such oath, or take such affidavit or affirmation, under the said Act of King George the Fourth or this Act, shall be deemed guilty of perjury, and such offender may be charged, proceeded against, tried, and dealt with in any county or place in the United Kingdom, in the same manner in all respects as if the offence had been committed in such county or place."

It is therefore apparent, that a most serious conflict of municipal law exists. The law of England, by the above Statute, endeavours to create a jurisdiction for its officers within foreign States, and to punish infractions of such jurisdiction; it further enacts by another Statute (the Common Law Procedure Act, 1854), that evidence submitted to its Courts, including that of foreigners taken within their rational jurisdiction, shall be supported by an oath. On the other hand, foreign States do not of necessity yield that jurisdiction to British officials within their own limits; infractions of such jurisdiction are not crimes by the *lex loci*; nor do foreign States of necessity permit their subjects, while within the national territory, to make oaths for purposes required by English courts.

It is again to be remembered that where by treaty, or by virtue of an *exequatur*, or by foreign law or custom, a British or other Consular Officer may have the sanction and jurisdiction of the territory where he resides, to administer an oath, false swearing or perjury would be a crime, not against the State which such Consular Officer may represent, but against the country or territory where he is exercising his Consular functions.

With regard to our own country, the rule of law appears to be as I have elsewhere shown,* that foreign consuls have

* See a paper on "The Administration of Oaths in Great Britain by Foreign Consuls," read at the Eighth Annual Conference of the Association for the Reform and Codification of the Law of Nations, at Berne, August, 1880. Printed by the Association.

no jurisdiction to administer an oath or to receive an affidavit; but with regard to evidence to be used abroad, our law is certainly fairer than that of Prussia, for the 5 and 6 Will. IV. c. 62, which expressly prohibits justices of the peace, or other similar persons, from administering voluntary oaths, purposely makes an exception in favour of "any oath, affidavit, or affirmation which may be required by the laws of any foreign country, to give validity to instruments in writing, designed to be used in such foreign countries respectively." But even in this case, should the oath taken be false, the offence of perjury would be committed, not against the foreign country for whose purposes the affidavit was required, but against the sovereignty of England in whose *territory* the offence occurred. Bearing in mind, however the language of Lord Ellenborough in *O'Mealy v. Newell*, it might well happen that for the specific offence of contempt of the foreign Court, punishment might also attach in the foreign country, should the perjurer ever be found *intra præsidia*.

The proper remedy, which obviously presents itself to the mind, as a means for determining the anomaly which I have pointed out, is the conclusion of a Treaty. Such Treaty supported, where the Constitution so requires it, by municipal or local law, should define and secure authority to the consul to administer oaths to the subjects of the country he represents, and to such subjects of the country in which he resides, and to such subjects of other States therein commorant, as may find it necessary for the satisfaction of the law of their nationality to make oath or affidavit before such consul. These provisions would, I believe, go far to meet the existing difficulty. The Treaty would of course be reciprocal, and all false swearing would be made perjury, and would necessarily be punishable by the territorial Court as an offence against the *lex loci*. Moreover, I doubt if it would be too Utopian a desire to suggest that perjury so

created by Treaty, should be made an extraditable offence. Perjury, *quà* territorial perjury, is already recognised as an extraditable offence. Why not extend that provision to the "extra-territorial" perjury which I have pointed out? The conclusion of a Treaty on the lines here advocated would, I conceive, present no untoward difficulty, while it would, I believe, have the happy effect of removing a great and prejudicial anomaly.

SHERSTON BAKER.

V.—THE VACANT CHIEFSHIPS.

THE thirty days, during which the attention of Parliament is called to the Order in Council for the abolition of the two vacant Chiefships of the Exchequer and Common Pleas, and for the consolidation of the three separate Common Law Divisions of the High Court, will expire in the course of the present month of February, and the Premier has formally promised Sir Richard Cross that he will do his best to afford the House of Commons an opportunity of discussing the proposed change before it is too late. The matter is, as Mr. Gladstone stated, one of great importance to the public, and it must be admitted that it is one with which the public and their representatives in Parliament have, for the most part, very little acquaintance. In truth, there are very few materials which will enable a layman to form an opinion upon it. The deliberations of the Judges who, by a large, though not an overwhelming, majority, formulated the recommendation on which the Order is based, were, of course, conducted in private; and with one notable exception, no member of that learned body has, as yet, taken the public into his confidence. Mr. Justice Stephen has, however, set forth in the January number of *The*

Nineteenth Century an elaborate exposition of his opinions, and it is to those pages that Sir Richard Cross or any other member of either House in search of 'light and leading' will inevitably turn. Sir James Stephen is no ordinary Judge, and is probably more free than most men from the prejudices of his profession. The services which he has rendered by his labours in the field of law reform, would, apart from his great and acknowledged ability as an author, ensure respectful and close attention for anything he might have to say. At the same time, when a Judge, however eminent, condescends to publish his extra-judicial views, he enters the arena of discussion and must be taken to invite criticism upon them. At present Sir James Stephen remains wholly unanswered, and the forthcoming debate seems in danger of languishing for want of champions from the opposite quarter.

Sir James Stephen rests his general objections to the alteration which both Houses are now asked to sanction on two grounds, namely:—(1.) Its immediate effect. (2.) The effect it may have in the future; or, in other words, its tendency to bring about further changes on which the Judges are not to be consulted. We propose to consider these two separately.

On the first objection, Sir James reasons as follows:—Attorneys and Solicitors-General and other men who rise to the very first places at the Bar are, by their antecedents, better qualified to discharge the duties of Judges of First Instance than the duties of Judges of Appeal. Any Attorney or Solicitor-General, either *in esse* or *in posse*, would, presumably, accept either of the Chiefships which it is proposed to abolish, and would, as presumably, decline any other Judgeship of First Instance; therefore, he concludes, by abolishing these Chiefships you are depriving the country of the judicial services of the very men who are best fitted to render them. It is obvious that the

major premiss of this syllogism itself requires argument to support it. And this Sir James Stephen thus supplies :—

(1.) Trial by jury is the really popular and impressive part of the administration of justice, and the lessons which its proceedings furnish depend to a great extent on the presiding Judge. (2.) In order that trial by jury may be a success, a great deal more is wanted than familiarity with legal principles, namely, temper, good manners, self-control, knowledge of mankind. (3.) A man who has seen a great deal of the world, such as an Attorney or Solicitor-General, is more likely to possess these qualities than the most learned lawyer who has not. Therefore (4), an Attorney or Solicitor-General is pre-eminently fit to preside over a jury trial. A good deal of this may be conceded at once; but surely Mr. Justice Stephen would not admit that a man need be an Attorney or Solicitor-General in order to have a knowledge of the world, or that there are not many practising lawyers who would make excellent Judges of First Instance, though they have never aspired to either of these offices by taking the trouble to secure a seat in Parliament. Sir James Stephen himself furnishes a complete refutation of his own argument, for none would deny him temper, good manners, knowledge of the world, or self-control, and yet he makes an admirable Judge without ever having been a law officer, or even having occupied a seat in the House of Commons. Many other like instances, which will occur to every lawyer, might be cited from amongst both the living and the dead. It is true that this is not all that Sir J. Stephen has to say on the point, for he adds that a great Judge of First Instance “must have an understanding of, and sympathy with, popular feeling,” and that these gifts are found in those who, like the law officers, “have had occasion to look at law and the administration of justice from the political point of view, and to acquaint themselves practically with the feelings and sympathies of popular bodies.”

If by this is meant that it is part of the business of a Judge to know what is going on in the world, with the affairs of which he has to deal, the proposition is self-evident; if it means more, it may suggest, to the uninitiated, a rather dangerous piece of advice. The late Lord Chief Baron Kelly, as each Lord Mayor's day came round, used to demonstrate his sympathy with a large popular body, to wit, the Conservative Party; but it is more than doubtful whether these 'sympathetic' utterances added to his judicial reputation.

To speak more seriously; it has often been remarked, and experience proves the fact, that the most successful advocates—who are always men of the world, but often have no great knowledge of law—commonly make but indifferent Judges; while those who are not so successful, but are sound lawyers, as commonly make exceedingly good ones: one reason being that a Judge who is weak in his law increases litigation by encouraging appeals, and another reason being that he lowers the dignity of the Bench by being placed at the mercy of his Bar, and being ruled by, instead of ruling, the strongest men who practise before him. A law officer of the Crown is nearly always a successful advocate, or he would not be specially selected to support his party in Parliament, but he is not necessarily a considerable lawyer. Both sets of qualities may, or may not, co-exist. When they do, their happy possessor is so richly endowed that it matters not to him whether he begins his judicial career as a Judge of First Instance, or as a Judge of Appeal; he is sure to rise to the very highest rank, from whatever point he starts. When the more solid qualities are wanting in a law officer, his professional claims are not, in strictness, stronger than those of any of his equals at the Bar, who have not, from choice or accident, filled so large a space in the public eye. He is, indeed, by force of precedent, entitled to look for further preferment,

but the strength of his case lies in the system of party rewards, which is exempt from all rules, and is, indeed, a 'law unto itself.'

Sir James Stephen's next objection to the proposed change is, that to attempt to create a single Common Law Division analogous to the single Chancery Division, is to aim at a uniformity that can never be more than nominal, owing to differences inherent in the subject-matter with which each Division is concerned. And he does not disguise his opinion that the Judicature Act of 1873 went too far in establishing one Supreme Court, of which all the Judges are members and all the Divisions are branches; at all events he insists that it would be unwise to carry this kind of simplification further. He admits that a great part of the litigation in the Chancery Division arises out of contracts and wrongs, but he founds a distinction between this litigation and that which takes place in his own Divisions, on the assumption that the former concerns several persons having conflicting claims as between themselves, and so requires intricate and qualified remedies, while the latter concerns only two persons or two sets of persons, and admits of simple remedies. This he illustrates by observing that "it is not a mere fancy to say that an action of damages" (meaning, it is presumed, an award of damages as the result of an action) "has a resemblance to a surgical operation, and a decree in equity to a course of medical advice." We venture to think that this part of the learned Judge's reasoning proceeds on an incomplete realization of what has been going on in the Chancery Division during the last five years, that is to say, ever since the Judicature Act came into force. The fact is, that the 'surgical operation' of awarding damages has, during that period, been performed by the Judges of the Chancery Division over and over again, for the simple reason that many of the actions tried before them have been in the

nature of actions at law. One of the Courts at Lincoln's Inn, in which, by a process of selection, nearly every case is heard with witnesses, has disposed of a vast number of such actions, and in that Court the fusion of law and equity may be said to have been complete. If the differences in the subject-matter of the litigation are fatal to the complete assimilation of the two procedures, it would follow that the Judge of the Court in question does not act as a Judge of the Chancery Division during a great portion of his sittings, although he is expressly attached to that Division, and to no other, by Act of Parliament. The only substantial distinction is that no jury is summoned in the Chancery Division; but this is not a distinction of principle, as cases are not unfrequently tried by the Judges of the Common Law Divisions, in which a jury is dispensed with by the consent of the parties.

There is but little foundation for Sir James Stephen's notion that the issues of fact in cases tried in the Chancery Division are different in kind from the issues of fact tried elsewhere, or that whereas the latter present a sharp and definite contradiction, the former, as a rule, present no contradiction at all. During the year 1880, more than 600 causes stood ripe for hearing in the Chancery Division list, all of them involving the examination of witnesses in open Court, and in a multitude of those that were heard the cross-examination was as stringent, the conflict of testimony was as great, and the rules of evidence were as closely discussed and adhered to, as in any cause tried during the same period at *Nisi Prius* by a Judge and jury.

You cannot, of course, as Sir James Stephen says, *fuse* the law relating to trusts, with which the Chancery Division largely deals, with any other branch of law; neither can you *fuse* the law of contingent remainders with the law of marine insurance. But this is scarcely an argument against fusion, that is, assimilation, of *procedure*, or against the same Judge

who administers the one law to-day administering the other to-morrow. The Judges of the Chancery Division, it should be more generally known, have got far beyond the interpretation and administration of trusts, to which their early predecessors were mainly confined, and when all of them go on circuit, instead of one only as at present, the sphere of their functions will be still further enlarged. The profession of the law, under the Judicature Act, no more encourages specialists than the profession of medicine does, and the efforts of its members are now directed to endeavouring to master the law as a whole, instead of resting content with being familiar with a part only. But for this, there would be little prospect of improving the law either in the way of simplifying its procedure, or of rendering it more certain and uniform, for every specialist has his own particular method of looking at things and his own particular *modus operandi*. But for this, there would be no fit materials out of which to form a Court of Appeal, for most persons admit that a good Appellate Judge is bound to know the law all round, though some may think that this is not requisite for a Judge of First Instance.

There is one other objection to the proposed change which is urged by Sir James Stephen, and it is the most important of all. It is said to be a prelude to the extension of the Chancery 'One-Judge System' to the Common Law Divisions, and such an extension is deprecated on the ground (1) that such an assimilation of the two procedures cannot be carried out fully without the abolition of trial by jury in civil cases; (2) that any attempt to carry it out fully without such abolition will greatly lower the efficiency and dignity of the Puisne Judges of the Common Law Divisions.

The drift of this reasoning is not apparent at first sight, and in order to appreciate it, it is necessary to understand with precision what is meant by the Chancery One-Judge System as distinguished from the system with which it is

contrasted. Here Sir James Stephen must be his own interpreter :—

“ The essence of the One-Judge System is that the case is first tried by a single Judge who decides both the fact and the law, and then re-tried by three Judges who also decide both on the fact and the law. The appeal is, in fact, a re-hearing. On the other hand, the essence of trial by jury is that the jury find the facts under the direction of the Judge who tries the case, and that the Judges to whom the appeal lies, do not enter upon the question of fact for the purpose of deciding it, but only for the purpose of considering the correctness of the direction given to the jury by the Judge who tries the case, in order to decide whether the matter of fact shall be remitted to another jury. In two words where there is no jury an appeal is a re-trial. Where there is a jury a motion for a new trial is the only form of appeal consistent with the essence of the institution.”

The two forms of appeal being thus by the definition shown to be distinct, it, of course, follows that, *to that extent* there is a difference between cases tried before a jury, as they usually are in the Common Law Divisions, and cases tried without a jury, as they always are in the Chancery Division. But how does this assist the proposition that the One-Judge System cannot be carried out fully in the Common Law Divisions without abolishing trial by jury in civil cases, unless, indeed, we are to attribute to the word “ fully ” a meaning which renders the proposition valueless?

The truth is, that the *form of appeal* does not properly enter at all into the idea of the ‘ One-Judge System,’ as is shown by the fact that this system is compatible with either of the forms of appeal mentioned by Sir James Stephen, namely, an appeal strictly so-called, or a motion for a new trial. Both forms of appeal are familiar to practitioners in the Chancery Division where the One-Judge System obtains. If a Judge of that Division improperly rejects evidence, or nonsuits the plaintiff without hearing the defendant’s witnesses, an appeal from his decision may, and, in practice, has been known to, result in a new trial

being ordered, and although a new jury is not summoned because there was no jury on the first trial, this is clearly not of the essence, so far as the appeal is concerned. Where, on the other hand, the Chancery appeal does not lead to a new trial, but is disposed of on the evidence adduced before the Court below, it is not strictly correct to say, if the evidence was oral, that the case is *re-tried* by the Court of Appeal. The Court of Appeal, except in very rare and peculiar cases, does not see the original witnesses, and can never judge of their veracity, or the weight of their testimony by observation of their demeanour at the time when it was given. This is the exclusive privilege of the Judge of First Instance, and is sometimes the surest guide to truth. It consequently happens that Chancery Appeals when they turn wholly on questions of fact, or as it is sometimes expressed, are 'appeals from the jury-half of the Judge's mind,' very seldom succeed. There were nineteen appeals in all last year from the Court at Lincoln's Inn, to which we have already referred; of these, fifteen failed, and the remaining four succeeded, but of these last only one, so far as we have been able to ascertain, succeeded on a question of fact.

What the advocates of the One-Judge System usually mean when they contend that it should be fully worked in the Common Law Divisions, is that each Judge of those Divisions should expound the law at the trial, or reserve it for his own consideration after the trial, instead of leaving it to be dealt with at a future time by some other Judge, or bench of Judges. In short, that he should not be reduced to the level of a Commissioner of Assize, deputed to try issues of fact only, leaving the issues of law to be decided by the Court in Banc. This alteration has, however, been effected by the Appellate Jurisdiction Act, 1876, so that the only point that has now to be considered is the proposal that motions for new trials in jury causes should be made to

the Lords Justices of Appeal, instead of to a Divisional Court. If the Court of Appeal can, and, as already shown, does, entertain motions for new trials in Chancery cases, it is not easy to see why it should not do so in all; still less why by so entertaining them it will destroy civil trial by jury. The only difference in the result will be that the appeal judgments will never be final in jury cases when a new trial is ordered, but neither are they final, when that happens, in non-jury cases.

It will doubtless be said that on the hearing of a motion for a new trial, which proceeds on alleged misdirection to the jury, or misruling on a point of evidence, it is all-important that the Judge appealed from should himself be present, otherwise there is a risk of miscarriage of justice from ignorance or perversion of what really took place at the trial. This is perfectly true, but there is an existing power in the Court of Appeal to request such Judge to attend it; and if there were not, it would seem desirable to confer it; at all events, in the absence of an agreed shorthand writer's note of what the direction or ruling was, it is obvious that there should be the fullest liberty of communication between the *Nisi Prius* Judge and the Court of Appeal.

The apprehension felt in some quarters that the fullest extension of the One-Judge System would, without the abolition of trial by jury in civil cases, lower the dignity and efficiency of the Bench, seems to be scarcely well founded. It is feared that its effect may be to relieve the Judges of the Common Law Divisions of the responsibility of deciding matters of law, and of making them mere reporters to the Court of Appeal of facts ascertained by the help of a jury. Such a result, if brought about, would certainly be disastrous; but it is almost inconceivable that it should occur. In the first place, if a question arises at a jury trial whether evidence shall be admitted or not, or how

the jury shall be directed, the presiding Judge has to dispose of it at once, and an immense demand is thereby made on his responsibility, stored-up learning, and good sense. If the matter can be discussed after the trial, he has full authority under the Act of 1876 to reserve it for further argument before himself; and when it is so discussed he is in exactly the same position as a Judge of the Chancery Division. In the next place, the Judges of the Common Law Divisions are by no means wholly occupied, as the Law Reports testify, with trials by jury; they have many other opportunities of listening to the arguments of the best lawyers at the bar, and considering the points so raised; as, for instance, when they sit on appeal from the judgments of inferior Courts—a practice with which the full extension of the One-Judge System need not in any way interfere.

Although we may thus combat the arguments against the changes involved in the Order now before Parliament, it is not necessary to contend that the present arrangements of our Judicature are perfect. The institution known as the Divisional Court has, it must be admitted, caused general dissatisfaction, and this dissatisfaction appears to be shared by Sir James Stephen. It was established by the Act of 1873, to discharge two distinct functions: 1st, as a substitution for the old sittings in banc, that is to say, as an *intermediate* Court of Appeal; 2ndly, as a Court of *final* appeal from Sessions, County Courts, or other inferior tribunals, except so far as special leave might be given to appeal to a higher tribunal. It is in their character of intermediate Courts of Appeal, and in that only, that the Divisional Courts have worked badly. If the complaint is that a Judge at Nisi Prius has misdirected the jury, which he can only have done by misstating the law applicable to the facts as proved, the Divisional Court is empowered to entertain a motion for a new trial, and this is, in substance,

an appeal on a point of law. If the complaint is that the jury has gone wrong, and that the verdict is against the weight of evidence, the application to the Divisional Court also takes the form of a motion for a new trial, but in this case no question of law is involved, the only question being one of fact. Whichever form the motion before the Divisional Court takes, it may be reversed in the Court of Appeal, and the judgment of the Court of Appeal may, in its turn, be reconsidered by the House of Lords, making no less than three appeals in all. But the inconvenience does not stop here. If an order is made by a Master in Chambers, of however trifling a character, an appeal from it lies to the Judge in Chambers, from the Judge in Chambers to the Divisional Court, from the Divisional Court to the Court of Appeal, and from the Court of Appeal to the House of Lords, thus making four appeals in all. It is obvious that in each of these cases there is, to use Sir James Stephen's words, at least "one appeal too many." In the Chancery Division no such unnecessary expense or delay is incurred. There, when a question has been argued before the Judge himself in Chambers, an appeal may be made direct to the Lords Justices without leave, although, in the absence of special circumstances, their Lordships require a certificate from the Judge below that he does not desire to hear further argument upon it in his own Court. Such a certificate is generally granted as a matter of course.

Numerous other similar anomalies in the working of the Divisional Courts, as contrasted with the One-Judge System, might be instanced. Some of them are collected by Mr. M. D. Chalmers, in a recent letter addressed by him to Mr. Baron Pollock.* "The most important cases," says Mr. Chalmers, "which come within the jurisdiction of County Courts, are Admiralty and Bankruptcy Cases. In Bankruptcy their jurisdiction is unlimited, yet Admiralty and

* Stevens and Sons, 1880.

Bankruptcy appeals from County Courts are heard before a single Judge, while in ordinary cases an appeal must be heard before a Divisional Court. A Chancery Division Judge sitting alone, daily grants perpetual injunctions, yet a single Judge cannot grant a prerogative writ of mandamus although an appeal lies as of right from his decision. A single Judge of the Chancery Division can issue a writ of prohibition, but if the prohibition be applied for on the Crown side of the Queen's Bench Division, the application must be made to a Divisional Court." These facts speak for themselves, and require no comment.

In order to redress the inequalities above noticed, without overburdening one part of the Judicature at the expense of another part, two proposals have been made, which are more or less interconnected, viz. :—

1. To abolish the Divisional Courts *in toto*. 2. To abolish the present Court of Appeal. The first proposal is of mainly professional interest, as being a matter of convenience of arrangement, the second is of moment to the public at large.

1. It is more than questionable whether it would be desirable wholly to abolish the Divisional Courts. When they are engaged in hearing appeals from the inferior Courts, or cases reserved by Magistrates in the exercise of their summary jurisdiction, they are doing valuable service. In the vast majority of cases so heard, their decision will be final, while their discretionary power of granting or refusing leave for a re-hearing before the Court of Appeal is one that may be reposed in them with perfect safety. It is analogous to the power reposed in the Court of Appeal itself of granting or refusing, in certain specified cases, leave to appeal to the House of Lords. *Interest reipublicæ ut sit finis litium* is a maxim that may be well applied when the case has been sifted by two tribunals, and the members of the Divisional Court feel no reasonable doubt about it.

By analogy, however, to the Court of Appeal, which, except when engaged on interlocutory business, must consist of not less than three Judges, we would suggest that the members of the Divisional Court, when transacting non-interlocutory business, should not consist of less than three. Unless the three members differed among themselves, it is not likely that leave to appeal would be granted in any case, while a Court of two might not feel sufficient confidence in its own conclusion to refuse an appeal in a final matter, where it reversed the decision below. This arrangement would go far to prevent the Judges of First Instance sinking to the level of mere Judges of fact, whether trial by jury in civil cases were ultimately retained or not.*

The point in which the Divisional Courts seem to require modification, is their jurisdiction to hear motions for new trials and appeals from orders made at Chambers. We have already stated reasons why, on the principle of the One-Judge System, this jurisdiction may be more properly and more economically reserved for the regular Appellate tribunal, whatever form that tribunal may assume. It may be urged that the tendency of this reform will be to add to the arrears of appeals, and that these are already heavy enough; but even if this be not avoided, as it might be, by increasing the number of Appellate Judges, it is better that appeals should be in arrear than that they should be unduly multiplied in individual cases.

2. The proposal to abolish the present Court of Appeal, by way of solving the problem, comes from Sir James Stephen himself. Subject to the three exceptions of the Lord Chancellor, the Master of the Rolls, and the President of the Divorce Court—officers with whom he does not propose to interfere—he would have all the Judges called by the same

*A good deal is to be said in favour of confining trial by jury to criminal cases, or, at all events, of restricting it within limits; but the country is hardly ripe for this, and the subject is too large to be more than glanced at here.

title, receive the same pay, and take precedence according to their seniority. In the place of the Court of Appeal, he would have Appellate benches consisting either of three or two Judges, according to the nature of the business to be disposed of, the Judges of each Division deciding amongst themselves by a rota who should sit on Appellate benches, and who at Nisi Prius. Whether it is intended, as a corollary to this proposal, wholly to abolish the Divisional Courts, Sir James Stephen does not say, but it may be presumed that it is, and that all business now transacted by the Divisional Courts shall be transacted in future by the new Appellate tribunal, so as to dispense with the objectionable intermediate appeal, and, at the same time, give a greater air of authority to the decisions on appeals from the inferior Courts.

So far the plan is excellent, but would it give satisfaction to the public? Would it not rather revive some of the old causes of dissatisfaction which the Judicature Act effectually removed? Sir James Stephen says that his scheme is not a reinstatement of the Court of Exchequer Chamber; but, with great respect to him, it is an approximation to it rather than, as he contends, a movement in the reverse direction. One of the strongest objections to the old Exchequer Chamber was that pointed out by the Judicature Commissioners in their First Report, namely, that "the Judges who had been overruled to-day might to-morrow sit in appeal from some decision of the Judges who had taken part in overruling them." Such a state of things is stigmatised by the Commissioners as "eminently unsatisfactory," and those who so thought included the present and the late Lord Chancellor, Lord Blackburn, now a Lord of Appeal in ordinary, the present Lord-Chief Justice of England, and two of the present Lords Justices, Sir W. M. James and Sir G. Bramwell. With such great names arrayed against it, the principle of the Court of Exchequer

Chamber may be regarded as 'past praying for,' and Sir James Stephen's scheme, which involves a good imitation of it, appears to have little chance of being realized in the lifetime of the present generation of lawyers.

Instead of resorting to the system of 'levelling up,' by making every Judge of First Instance an Appellate Judge in his turn, would it not be better to provide that no one should be qualified for a Judgeship of Appeal who had not served, say, for two years, as a Judge of First Instance? Would it not also be better to strengthen the Appellate tribunal, by adding to its number (if necessary), by increasing the pay of its members, and by relieving them, after twelve months' service or more, from the arduous duties of Circuit? If the Divisional Courts are abolished or modified, the Court of Appeal will have more to do, and it is reasonable that its members should be more highly paid, and not be liable to have their labours interrupted by the distraction of officiating as Judges of Assize. These slight alterations would obviate the danger suggested by Sir James Stephen of Judges of Appeal proving unfamiliar with the details of practice, for after such a training as they would then have undergone, both at the Bar and on the Bench, they could not fail to be equal to any legal emergency. Moreover, under this arrangement, it could no longer be objected that the law officers were not adequately attracted to the Bench, for if all Judges must begin by being Judges of First Instance, no law officer would decline such a post in the hope that, before the sands of his hour-glass were run out, he might attain a higher appointment. The law officers themselves could not reasonably complain of the change, for they clearly have no vested interest in their own promotion. If they have, some compensation ought to be awarded to those who, by reason of the number of qualified candidates exceeding the vacancies, or by the turn of the political tide, cannot possibly be provided for in the way warranted by their merits.

One word in conclusion. The mode in which justice is administered in England has unquestionably gained the confidence of the suitors and of the public generally. And this confidence has been largely engendered by an absolute belief in the integrity, the learning, and the wisdom of our Judges. For the improvement of the machinery by which they act, we have to thank the authors of the Judicature Acts, and those who prepared the way for those Acts by their labours on the Judicature Commission. It would, as we venture to think, be a mistake to infer that because that machinery has been found to be faulty, it is substantially out of gear, or to suggest that it is possible to make violent changes in the fundamental relations of the component parts of our Judicature, or to revert in any shape to antiquated forms of it, without shaking the faith of the country in one of the most valuable of its Institutions.

Q. C.

Legal Obituary of the Quarter.

(ENGLAND, SCOTLAND, AND IRELAND.)

ANDREW, John, Esq., Solicitor, of the Temple, aged 67. Admitted 1848. *Dec.* 20.

ASHMORE, James, of Lincoln's Inn, Esq., Barrister-at-Law, aged 81. B.A., Univ. Coll., Oxon. Called 1825. *Jan.* 11.

BARRY, Sir Redmond, K.C.M.G., Senior Puisne Judge of the Supreme Court, Victoria, aged 67. B.A. Trin. Coll., Dublin, 1837; Hon. L.L.D., 1876. Called to the Irish Bar, 1838. Solicitor-General, Victoria, 1850; elevated to the Bench, 1851. Chancellor of the University of Melbourne. *Dec.*

BELEMORE, Walter, Esq., Solicitor, aged 35. Admitted 1872. *Dec.* 10.

BENNETT, Garrod, Esq., Solicitor, Ipswich, aged 33. Admitted 1871. *Dec.* 7.

BROWN, Francis Whyborough, Esq., Solicitor, Leeds, aged 31. Admitted 1872. *Dec.* 13.

CARMICHAEL, James, Esq., Clerk of Crown for the County Tipperary, aged 85. *Nov.* 2.

CHARTRES, William, Esq., Solicitor, Newcastle-upon-Tyne, aged 71. Admitted 1832. *Dec.* 5.

CHRISTIAN, Henry, Esq., Solicitor, Liverpool, aged 67. Admitted 1837. *Nov.* 9.

CHRISTIE, J. Cockburn, Esq., W.S. (Scot.), Deputy-Keeper of Records. Admitted 1838. *Sept.*

COCKBURN, Rt. Hon. Sir Alexander James Edmund, of Langton, Bart., G.C.B., Lord Chief Justice of England, aged 78. Sir Alexander, who was the tenth Baronet of Langton, cr. 1627 (not, as erroneously printed in some obituary notices, 1657), was the only son of His Excellency Alexander Cockburn, Envoy Extraordinary and Minister Plenipotentiary to the Republic of Colombia, South America, by his second wife, a niece of George, Lord Lyttelton. The early years of the Lord Chief Justice were spent partly abroad. He went up to Trinity Hall, Cambridge, in 1822, gained the second year prizes for the best English and Latin exercises, and subsequently the

English Essay. Graduating LL.B. in 1829, he was elected Fellow of Trinity Hall, a house distinguished for its long roll of eminent jurists. Called to the Bar by the Honourable Society of the Middle Temple in 1829, Mr. Cockburn joined the Western Circuit, where he soon made his mark. In 1834 he was appointed one of the Royal Commission on Municipal Corporations, and a Q.C. in 1841. In 1847 he was returned M.P. (Liberal) for Southampton, and continued to sit for that borough until raised to the Bench. He became Solicitor-General, and was knighted, 1850. Attorney-General on Sir John Romilly's elevation, 1851-2, and again 1852-6. In 1852 he became Recorder of Bristol, and in 1853 Treasurer of his Inn. In 1856 he succeeded Sir John Jervis as Chief Justice of the Common Pleas, and in 1857 became Lord Chief Justice of England. Lord Coleridge, his successor in the Lord Chief Justiceship of England, addressing the Attorney and Solicitor-General and a full gathering of the Bar, a few days after Sir Alexander's decease, said:—"He was undoubtedly a man of singular distinction; his high birth, his good connexions, his wide and varied scholarship, his large cultivation, his many accomplishments, his great social gifts, added a distinguishing individual characteristic quality to all that he did, and imparted, if I may say so, a peculiar value to his eloquence and his mental force. Whatever else might be said, no one could say he was commonplace and like other people. His power of dealing with complicated facts, presenting them in harmonious order and reasoning powerfully upon them when so presented, was of a very high kind indeed. With regard to his political career, brilliant as it was, it does not become me here to say a word beyond this, which is not a political remark, that it was from beginning to end honourable and consistent. Such as he was as a young man at the Bar mess of the Western Circuit, such he continued to be when by dint of brilliant speeches he had made himself Attorney-General to Lord Aberdeen and Lord Palmerston. Of his equally brilliant and equally well-known professional career, it would, in this Court, be impertinent to speak; but this I can say, from personal knowledge, that no man who ever was opposed to Sir Alexander Cockburn ever complained of the slightest deviation on his part from the sternest rules of honour and integrity. As a Judge his chief and leading characteristic appeared to me to be a sleepless and ardent desire to do justice as between man and man to the

suitors who came before him. Though naturally inclined to ease and pleasure, he shrank from no trouble, he declined no toil, that might lead him to the truth." *Nov. 20.*

COLVILLE, Rt. Hon. Sir James William, of Craigflower, Fifeshire, Senior Paid Member of the Judicial Committee of the Privy Council, and a Bencher, Inner Temple, aged 70. Sir James, who was eldest son of the late Andrew Colville, of Ochiltree, Esq., by Louisa, daughter of the first Lord Auckland, was educated at Eton and Trinity College, Cambridge, B.A., 1831 (Senior Optime, 3rd in 2nd Class, Mathematical Tripos), M.A., 1834. At the University he was a friend and contemporary of Monckton Milnes, and Tennyson. Called to the Bar by the Honourable Society of the Inner Temple, in 1835, he practiced for ten years as an Equity Draftsman. In 1845, he was appointed Advocate-General at Fort William, and in 1848, Puisne Judge of the Supreme Court there, and was knighted. In 1855 he became Chief Justice. On retiring and returning to England in 1859, he was made a Privy Councillor and an Assessor for Indian Appeals, together with another distinguished Ex-Chief Justice, the Right Hon. Sir Lawrence Peel. In 1865 he became a member of the Judicial Committee, and one of the paid Judges appointed in terms of the Act of 1871. He had sat at Whitehall on the day but one before his death. *Dec. 6.*

CORRIGAN, William Joseph, of the King's Inns, Esq., Barrister-at-Law, LL.D. Called 1860. *Jan. 21.*

COXWELL, Edward, Esq., Solicitor, for many years Clerk of the Peace, and Coroner, Southampton, aged 74. Admitted 1828. *Nov. 2.*

DARE, Henry Arthur Kekewich HALL-, of the Inner Temple, Esq., Barrister-at-Law, aged 26. Called 1875. *Nov. 27.*

DARLING, James Stormonth, Esq., W.S. (Scot.) J.P. for Forfarshire. Admitted 1855. *Jan. 8.*

DRUCE, Charles, Esq., Solicitor, aged 88. Admitted 1814. *Jan. 10.*

DYCE, John Neil, Esq., Advocate, late Sheriff-Substitute of Lanark, aged 71. Obtaining a commission in the 2nd Madras Cavalry in 1824, he retired after some years service, and proceeded to Trin. Coll., Camb., when he took his degree of M.A. Called 1843. *Nov. 19.*

FISHER, Thomas, Esq., Solicitor, Liverpool, aged 78. Admitted 1824. *Dec. 24.*

FORSYTHE, John, Esq., Solicitor (Irel.) *Dec. 4.*

GALLWEY, Thomas, of the King's Inns, Esq., Barrister-at-Law. J.P. Cos. Cork, Kerry, and Limerick. Called 1840. *Dec. 15.*

GARLAND, George, Esq., Solicitor, late of Worcester, aged 78. *Dec. 25.*

GARSIDE, John Edward, Esq., Solicitor, one of the Coroners for the County of Chester, aged 40. Admitted 1863. *Nov. 15.*

GATES, Christopher Hill, Esq., Solicitor, Lutterworth, aged 56. Admitted 1846. *Oct. 20.*

GREER, Samuel Macurdy, Esq., County Court Judge (Irel.), aged 72. *Nov. 3.*

GUEST, Edwin, of Sandford Park, near Oxford, and formerly of Lincoln's Inn, Esq., Barrister-at-Law, late Master of Gonville and Caius College, Cambridge, aged 77. M.A. and Fellow, Caius College (11th Wrangler, 1824). Called to the Bar, 1828. Master of Caius College, 1852. LL.D., 1853. Vice-Chancellor of the University, 1854. F.R.S., 1841. J.P. for Oxfordshire. Author of a "History of English Rhythms," and "The Early English Settlements in Great Britain." *Nov. 23.*

GUEST, John, Esq., Solicitor, lately one of the Registrars of the Birmingham County Court, aged 69. Admitted 1833. *Oct. 3.*

HALL, John, Esq., Solicitor, Manchester, aged 73. Admitted 1836. *Nov. 30.*

HAMPTON, Edward Adolphus Frederick, Esq., Solicitor, Cirencester, aged 47. Admitted 1861. *Nov. 7.*

HANDLEY, John, of Clipsham Hall, Rutland, and of the Inner Temple, Esq., Barrister-at-Law, aged 73. J.P. and D.L. for Nottinghamshire (High Sheriff, 1869), and a banker at Newark-on-Trent. M.P. (Liberal) for Newark, 1857-65. *Dec. 8.*

HARRIS, Henry, Esq., Solicitor (Irel.) Admitted 1838. *Jan. 8.*

HERON, William, Esq., Solicitor, Manchester. Admitted 1835. *Dec. 22.*

JAMESON, Thomas, Esq., Solicitor (Irel.), aged 69. Admitted 1840. *Dec. 26.*

JERVOISE, Francis Jervoise ELLIS, of Herriard Park, Hants, The Moat, Britford, Wilts, and of the Inner Temple, Esq., Barrister-at-Law, aged 71. M.A., Merton Coll., Oxon. J.P. and D.L. for Hampshire, and High Sheriff, 1852. *Jan. 7.*

JORDAN, Miles, Esq., Crown Solicitor of Mayo. *Jan. 18.*

KAYE, John Pass, Esq., Solicitor, Birmingham. Admitted 1855. *Jan. 15.*

KENNAN, Michael, Esq., Solicitor (Irel.) *Oct. 23.*

KIRBY, Lawrence D., of the Inner Temple, Esq., Barrister-at-Law. Called 1868. *Nov. 2.*

LAWLER, Thomas, Esq., Solicitor (Irel.) *Nov. 25.*

LEIGH, John, of the Inner Temple, Esq., Barrister-at-Law, aged 71. Called 1835. Chairman of Quarter Sessions, and Judge of Courts of Common Pleas, Jamaica, 1840. Stipendiary Magistrate, South Staffordshire, 1846. Metropolitan Police Magistrate, Worship Street, 1860-62.

L'ESTRANGE, Hilary Frederick, of Lincoln's Inn, Esq., Barrister-at-Law, aged 80. M.A., Trin. Coll., Dublin. Called 1826. *Jan. 13.*

LITTLE, George, of the Middle Temple, Esq., Q.C., and a Bencher. Vice-Chancellor of the Duchy of Lancaster. Called 1840. *Jan. 27.*

LOGIE, Daniel William, Esq., Solicitor, aged 61. Admitted 1863. *Dec. 30.*

Low, John, of the King's Inns, Esq., Barrister-at-Law, aged 66. M.A., Trin. Coll., Dublin. Called 1835. J.P. and D.L. for Co. Limerick, and High Sheriff, 1852. *Oct. 15.*

MCCALMONT, Frederick Haynes, of the Inner Temple, Esq., Barrister-at-Law, aged 34. B.C.L. and M.A., Oriel Coll., Oxon. Called 1872. *Nov. 4.*

MCGACHEN, Frederic Stewart, of the Inner Temple, Esq., Barrister-at-Law, and of the Bar of Upper Canada. Called 1849. *Oct. 18.*

MARSHAM, Robert Bullock, of Caversfield, Oxon., Esq., Barrister-at-Law, Warden of Merton College, Oxford, aged 94. Eldest son of the late Hon. and Rev. Jacob Marsham, D.D., Canon of Windsor, and nephew of the first Earl of Romney. B.A., Ch. Ch.; Oxon., 1807. M.A. and Fellow, Merton Coll.; D.C.L. 1826, and Warden of Merton Coll. J.P. and D.L. for Oxfordshire. Formerly Recorder of Rochester. Unsuccessfully contested the representation of Oxford University with Mr. Gladstone in 1852. *Dec. 27.*

MARTIN, Sir William, Knight, late Chief Justice of New Zealand, aged 73. B.A. (26th Wrangler and 2nd Chancellor's Medallist), St. John's Coll., Camb., 1829, afterwards M.A. and Fellow. Called to the Bar at Lincoln's Inn, 1836. Appointed the first Chief Justice of New Zealand in 1841. Retired 1858, and the same year received the honorary degree of D.C.L. from the University of Oxford. Knighted 1860. *Nov. 18.*

MELLOR, William Chandley John, Esq., Solicitor, Huntingdon. Admitted 1861. *Nov.* 5.

MONTGOMERIE, Roger, Esq., Advocate, Depute Clerk Register. Grand nephew of the twelfth Earl of Eglinton. B.A., St. John's Coll., Camb. Called 1852. M.P. (Cons.) for North Ayrshire, 1874-81. *Oct.* 26.

MOORE, Joseph Schröder, of the Middle Temple, Esq., Barrister-at-Law, late one of the Judges of the Supreme Court, New Zealand. Called 1842. *Dec.* 7.

MULVANY, Henry William, of Cowley Hill, St. Helen's, Lancashire, Esq., Barrister-at-Law, aged 90. *Jan.* 18.

NORTH, Henry, Esq., formerly Solicitor and Town Clerk of Woodstock, Oxon., aged 84. *Jan.* 22.

O'DOWDA, Robert, of the King's Inns, Esq., Barrister-at-Law, late of Calcutta. *Jan.* 8.

O'FERRALL, John Lewis MORE-, of Lisard, Co. Longford, Granite Hall, Kingstown, and of the King's Inns, Esq., Barrister-at-Law, aged 80. M.A., Trin. Coll., Dublin. Formerly Commissioner of the Metropolitan Police, Dublin. Called 1827. *Jan.* 21.

ORMIDALE, Robert Macfarlane, Lord, of the Court of Sessions, Scotland, aged 78. Son of the late Parlane Macfarlane, Esq., of Glen Luss, Dumbartonshire, by Anne, daughter of Alexander Campbell, Esq., of Ormidale, Argyleshire. Educated at the Universities of Glasgow and Edinburgh. After having practised for ten years as a Writer to the Signet, he was called to the Scottish Bar in 1838. Sheriff of Renfrewshire, 1852. Raised to the Bench of the Court of Session, 1862. *Nov.* 3.

PALLES, Andrew Christopher, Esq., of Little Mount Palles, Co. Cavan, formerly a Solicitor in Dublin, aged 79. Father of the Right Hon. Christopher Palles, Lord Chief Baron of the Exchequer in Ireland. *Dec.*

PARKER, John, Esq., Solicitor, and formerly Town Clerk, High Wycombe, Bucks, aged 79. Admitted 1823. *Dec.* 22.

PEARCE, John Whitehead, of Trenyhton, Par, Cornwall, and of the Inner Temple, Esq., Barrister-at-Law, aged 68. M.A., Exeter Coll., Oxford. Called 1837. Captain, Duke of Cornwall's Rangers. Joined Garibaldi as a volunteer in 1859, and gained the sobriquet of "Garibaldi's Englishman." In the following year he distinguished himself at the battle of Melazzo; was present at the advance on Naples, and commanded the English Legion in the campaign which ended with the fall of Gaeta. J.P. for Cornwall, and High Sheriff, 1869. *Nov.* 21.

PENFOLD, John Croucher, Esq., Solicitor, Brighton, aged 53. Admitted 1853. *Nov.* 7.

PILCHER, James Ernest, Esq., Solicitor. Admitted 1865. *Nov.* 25.

PLUNKET, Hon. Charles Bushe, of the King's Inns, Barrister-at-Law, Chief Magistrate of Police, Hong Kong. Second son of the third Baron Plunket, by a daughter of the late Right Hon. Charles Kendall Bushe, Chief Justice of the Queen's Bench, Ireland. B.A., Trin. Coll., Dublin. Called 1866. *Dec.* 21.

POPE, Henry Montagu Randall, of Lincoln's Inn, Esq., Barrister-at-Law, aged 31. M.A., and formerly Fellow, Lincoln Coll., Oxon. Called 1873. *Jan.*

RHODES, John Jackson, Esq., Solicitor, Newport, Isle of Wight. Admitted 1851. *Nov.* 16.

ROACH, John, Esq., Solicitor (Irel.), aged 87. *Jan.* 17.

RYAN, Thomas, Esq., Assistant Crown Solicitor, Munster Circuit. *Jan.* 19.

SAYCE, James, Esq., Solicitor, aged 51. *Nov.* 2.

SETON, Sir William Coote, Bart., of Pitmeddan, Aberdeenshire, Advocate, aged 72. J.P. and D.L. for Aberdeenshire. Called 1831. *Dec.* 30.

STANFORD, John Frederick, of Lincoln's Inn, Esq., Barrister-at-Law, aged 65. M.A., Christ's Coll., Camb. (Senior Optime), and Worts Travelling Bachelor; F.R.S.; F.S.S. (Paris). J.P. for Middlesex, and D.L. for Berkshire. M.P. (Cons.) for Reading, 1849-52. Author of several pamphlets on "Suppression of Mendicity," "Systematic Colonisation," &c. Called 1844. *Dec.* 2.

STODDART, Thomas T., Esq., Advocate. Called 1833. *Nov.* 22.

SMITH, George, of the King's Inns, Esq., Barrister-at-Law. *Dec.* 27.

SQUARE, Elliot, Esq., Solicitor, Plymouth, aged 40. Admitted 1866. *Dec.* 12.

THOMAS, Charles Smith, Esq., formerly Proctor, Doctors' Commons, aged 71. Admitted 1833. *Oct.* 16.

THOMPSON, Henry, Esq., Solicitor, Grantham, Lincolnshire, aged 71. Admitted 1830. *Dec.* 13.

TINDAL, Acton, Esq., Solicitor, Aylesbury, and Clerk of the Peace for Buckinghamshire since 1838, aged 68. Grand nephew of the late Rt. Hon. Sir Nicholas Conyngham Tindal, Chief

Justice of the Court of Common Pleas. Admitted 1834. *Oct.* 26.

TODD, William, Esq., Solicitor, Hartlepool, aged 50. Admitted 1855. *Oct.* 19.

VAUGHAN, Edward, Esq., Solicitor (Irel.), aged 57. Admitted 1856. *Jan.* 8.

WHITE, William, Esq., Solicitor (Irel.) Admitted 1847. *Jan.* 10.

WILDE, William, of Gray's Inn, Esq., Barrister-at-Law, and a Bencher, aged 83. Served for a few years in the Royal Navy, and as a midshipman was present on board the *Bellerophon* when Napoleon sought refuge thereon, after his escape from France. Called 1822. Chief Justice of the Island of St. Helena, 1836-63. *Nov.* 10.

WOOLDRIDGE, Charles, Esq., Solicitor, Winchester, aged 81. Admitted 1820. *Oct.* 18.

Quarterly Notes.

Among the international complications of the day, that which has arisen in the Transvaal is not the least serious. For it cannot be questioned that the action of the British High Commissioner, Sir Theophilus Shepstone, in putting an end to the separate existence of the Boer State, was never cordially accepted either by the Boers themselves, or by their cousins at home. The recent outbreak, with all the passions which war—even though it were to be, which we fear there are no signs of its being, but a “six weeks’ war”—cannot fail to arouse, increases the difficulties of a peaceful solution. This is a point which we think our Dutch friends have not sufficiently considered. We have received from an esteemed correspondent in the Netherlands, Dr. Beelaerts van Blokland, copies of the “Address to the People of England concerning Transvaal,” which has been, and still continues to be signed by persons of every rank in life, far and wide through the country. It is natural, we think, that such an expression of feeling should have been aroused. It may be doubted whether France or Germany would not have put forth stronger expressions of feeling on the absorption of a colony of French or German blood. But

we have to deal with facts. And the fact that British authority had been established, and was in working order, at the time of the outbreak, is beyond question. It is, therefore, simply a necessity that such authority should be restored before any ulterior arrangements can be considered. This is practically the gist of the utterances from the Throne on the Transvaal question.

But in the course of the same Speech, Her Majesty clearly intimated that her advisers were willing, as soon as it should become possible, to restore to the Dutch colonists as large a measure as possible of that self-government which they prize so highly. Therefore, we must say that it appears to us the best counsel the Boer Triumvirate could give their fellow-citizens, would be to propose an armistice, with a view to pacification, and the entering upon a calm discussion of the terms which may seem suitable to the Imperial Government for the restoration of autonomy. And if this, unhappily, should prove too peaceful a counsel for either side, now that the dogs of war have been let loose, and so many gallant lives have already been sacrificed, let it, at least, be the object which the Triumvirate keep steadily in view, and let them discourage everything which may have a tendency to prolong a state of war. And above all things, so long as the war lasts, let it be conducted punctiliously in accordance with the laws and usages of civilized nations.

We therefore trust in any case to hear no more of such "practical" surprises of half unarmed soldiers as overtook the 94th regiment, or of wild proposals to shoot such and such a commandant, who may have fallen into the hands of the enemy. These are things which could only win the reprobation of Europe, and disfigure whatever may have been the original justice of the Boer cause, which our friends in Holland so warmly defend, appealing, as is natural, to our own sentiments of the value of nationality and independence. We want peace, but it must be in reality, not in mere words, peace with honour, and that on both sides.

It was understood at the outset that the Boer Triumvirate professed willingness to receive a British Consul. We are glad to find from later and fuller accounts that they have acted more consistently in expressing willingness to receive a diplomatic envoy, or a Minister resident; and we are strongly of opinion that an officer charged with Legatine powers and rights should

reside in the Transvaal, rather than a simple Consul, supposing that full sovereignty were to be restored. But we observe that the Triumvirate, in their latest and most authoritative document, published in the *Times*, appear to favour Confederation. This seems to us to point to a possible solution of the difficulty, if the other South African States and our own Colonies could be induced once more to consider the question. The Transvaal might very well enter such a Federation as one of the South African States, under the suzerainty of Great Britain, while governing itself, for local purposes, through its own Volksraad, under its own President. The Triumvirate express a desire for, and thereby profess a readiness to accept, the mediation with the British Government of the Orange Free State. We shall be glad to hear that the President undertakes the honourable mission, and we should have no fears that the Home Government would not give their best attention to any proposals which His Honour might be authorised to make on behalf of the Triumvirate, who would speak as the *de facto* rulers of the Transvaal, and, in any case, as recognised organs of the wishes of the Boer population of the Transvaal. "The Boers," it was sometime since admitted, "have not much to cause them to love us, for we drove them beyond the English pale. They were first driven out of the Cape, and afterwards out of Natal." (*Our Imperial Resources*. Speeches delivered in Dundee by Alexander Robertson, M.A., Barrister-at-Law. Dundee. 1880.) The same writer who makes this acknowledgment also acknowledges that the isolation of the Boers has produced "gross ignorance and moroseness of temper." That isolation, it must be remembered, is principally, if not entirely, of their own seeking. It is not uninteresting to remark that the author from whom we have cited these impartial statements shows himself an advocate of Confederation for the South African States and Colonies. Only we should all remember what Mr. Robertson rightly insists upon, that to force Confederation upon the African Colonies would be the greatest folly. To be lasting, union between States, as between individuals, must be based not only on common interests, but on a common feeling of interest. The Boers, it appears from their own published statements, are prepared for a Confederation. Would our own Colonies be ready to join with the Transvaal and the Orange Free State?

A case involving several interesting questions concerning Domicile, and Consular Jurisdiction in Extra-Territorial Crime, according to Italian law, recently came before the Court of Cassation, in Rome, and is reported in the *Circolo Giuridico* of Palermo (11th year, Ser. II., Oct.-Nov., 1880, Penal Decisions, p. 125).

The person accused was a native of, and domiciled in, Palermo. The crime charged was attempt at homicide (*mancato omicidio*), on the person of another Italian subject, in Tunis, where both parties were under the Italian Consular jurisdiction. A conflict having arisen between the Correctional Tribunal of Palermo, which claimed to be competent, in virtue of Articles 6 of the Penal Code, and 34 of the Code of Penal Procedure, and the Consular Tribunal of Tunis, which claimed under Articles 111 and 115 of the Consular Law of 18th January, 1866; the Consular Court being under the Court of Cassation of Turin, the decision of the conflict belonged to the Court of Cassation of Rome, in virtue of Article 3 of the Law of 14th December, 1876. The Royal Procurator-General argued: That the Consular Jurisdiction is exceptional, and to be called into action in default of the ordinary jurisdiction, but ceases to exist the moment that the subject returns to the country of his allegiance, and falls under the sway of the law of the land (*legge comune*), in accordance with Article 166 of the Consular Law. The person charged returned to his country, and was arrested in Palermo, the place of his domicile. The Courts of the Kingdom have jurisdiction, by the Articles above cited of the Penal Code, and Code of Penal Procedure. Consequently, the Court of the place of domicile or arrest is competent. The Procurator-General accordingly demanded, on behalf of the Crown, that the Court of Cassation should determine the conflict by declaring the competency of the Correctional Tribunal of Palermo, and ordering the case to be taken there. The Court adopted the prayer of the Royal Procurator-General, and *held* that the Correctional Court of Palermo had jurisdiction, and must try the case.

No question appears to have arisen as to the oaths under which the charge must have been made. We presume that they were administered, in the first instance, by the Italian Consul in Tunis, and were held adequate to sustain the charge in Palermo.

Reviews of New Books.

The Law of Copyright in Works of Literature and Art, together with International and Foreign Copyright, and the Statutes relating thereto, &c. By WALTER ARTHUR COPINGER, of the Middle Temple, Esq., Barrister-at-Law. Second Edition. Stevens and Haynes. 1881.

This new and revised edition of Mr. Copinger's valuable work on Copyright comes out at a very opportune moment. The law of the land, after having been subjected to a close, not to say microscopic analysis, by a Royal Commission, including one of the masters of English juridical thought, has been described in the forcible language of the Report as "nowhere stated in any definite or authoritative way." The "form" of the existing law is acknowledged by the Commissioners to be bad, and wholly destitute of any sort of arrangement; still nothing has yet been done to remedy the confusion induced by such a state of things. This is, no doubt, very characteristic of our country, but it is not therefore creditable to us, or to our civilization. Our "kin beyond sea" are by various recent decisions of their Courts, and by the conflicting views, which threaten to prevent any amelioration of the existing American position, practically at a dead-lock. On all these points much might have been said, but on these points Mr. Copinger is, we presume designedly, silent. Perhaps the broader line which we should have liked to find taken in his new edition lay, strictly speaking, outside the province which he had marked out for himself from the first. Still, we regret the passing of such a "self-denying ordinance," as we think these are days in which the question of Copyright requires to be treated from the point of view of criticism and suggestion. We are glad to observe that in his present edition Mr. Copinger has made some use, for the Foreign Law, of the valuable "Annuaire," published by the Society of Comparative Legislation, in Paris, as well as of some of the information on this branch of the subject which has appeared in our own pages. But it seems curious that he should only cite our number for August, 1878, and not have taken note of the number for November, 1879, in which we printed, with additions, Mr. Carmichael's paper on "Copyright Reform and the Report

of the Royal Commission," read before the Jurisprudence Department of the Social Science Association at the Manchester meeting. The suggestion there made that the question should be taken into consideration by the Jurisprudence Committee of the Association, is now, we are glad to say, being acted upon, the Bill originally introduced by Lord John Manners, Viscount Sandon, and the then Attorney-General, having been placed in the hands of Mr. G. W. Hastings, M.P., President of the Council. We should have been pleased to have seen greater fulness of treatment of the American branch of the Copyright question, which is alike important and intricate. The close connexion of the Trade Mark question with that of Copyright, in the United States, is manifest both in the recent well known Trade Mark cases, *United States v. Steffens, &c.* (U.S. Reports, 100, Otto, 10), and in the still more recent case of "Washington Irving's Works," where the representatives of Irving claimed a Trade Mark in that title, in order to restrain the publication of an imperfect edition of the "Works," after the Copyright therein had expired. This interesting point is, we understand, awaiting solution, the judgment of Justices Best and Lawrence, adverse to the existence of such a Trade Mark, having at once been appealed. We shall be curious to see the result. It seems obvious that the success of the appellants would turn the flank of the existing American Copyright Legislation. And one remarkable feature of the case is that such success would, if we mistake not, bring in perpetuity by a side wind, so to speak, the right of property in a Trade Mark, being, as we understand, unlimited in duration. Protection is given to a Trade Mark for the period of thirty years from registration, renewable on demand for a fresh period of thirty years. Thus, in any case, the appellants, if successful, would be able to secure a longer protection than by means of the local Copyright Law, and, admitting this, we see no abstract difficulty in the way of an unlimited chain of registrations and renewals of the Trade Mark "Washington Irving's Works." It might then, perhaps, be worth while for Mr. Copinger himself to register a Trade Mark in the office of the Commissioner of Patents, Washington. We should have liked, from the point of view of style, to see greater attention paid to his English by Mr. Copinger. The utility, no less than the elegance, of his Treatise would have been enhanced, and notably so in the sections relating to Translation, by a closer following of the best masters of our literature.

We have, for instance, had a hard struggle, and we are not sure that it has been altogether a successful one, to make out Mr. Copinger's meaning in his 5th paragraph on p. 211. What between the non-protection of the original work there referred to, and the "unauthorised copy of a translation" of a work which is yet, according to the hypothetical statement, "open to any number of persons to translate," we find extreme difficulty in reaching the desired goal of "piracy." Nevertheless, in the interests of Juridical Science we welcome our author's reappearance on the field of Copyright Law. It is a wide field, with room and with need for many workers. Mr. Copinger's chapter on Foreign Law is a useful feature of his Treatise, and it is one which, both in its Continental and American sections, cannot fail to become more and more useful. It is somewhat disappointing, after reading in a note to p. 506 that the Copyright Convention of 1857 with Spain had been denounced so as to expire in March of last year, not to find at least a hint of the fresh Convention notified by Order in Council, dated at Balmoral, 20th November last. And the Spanish Draft Law of 1877 having been cited, it would have been worth while mentioning, as an index of a rather widely-spread current of thought on the proper duration of Copyright, that the long period of the author's life and 80 years, now fixed in Spain, is avowedly only a step in the direction of perpetuity. If we have not misapprehended M. Demeur's personal tendency, as we gathered it at the Brussels Congress of Commerce and Industry, it sets rather in the same direction, and may not be without influence on future Belgian Legislation. There will be much to add, we expect, to the Foreign Chapter of Mr. Copinger's next edition, and we hope it may not be long before the public demand shall require a fresh issue of his useful and comprehensive Treatise.

The Institutes of Gaius and Rules of Ulpian, with Translation, Notes critical and explanatory, and a copious Alphabetical Digest. By JAMES MUIRHEAD, Professor of the Civil Law, University of Edinburgh. (Edinburgh: T. and T. Clark. 1880.)

The revived interest in the study of Roman Law, which in England has been greatly fostered by the enlarged courses of study at the ancient Universities and the Inns of Court, never really needed revival in Scotland. For there, at least, it was

always, and is still, a practical study, the necessary complement of education in a legal system more closely akin in many respects to that of Rome than to the Feudalised Teutonism of English Law. Professor Muirhead, therefore, to our mind, starts with a great advantage over his English brethren when he proposes a Translation of the Institutes of Gaius. And this advantage, we think, is perceptible in his work as a translator, except where he presses it too far in asking us to receive as English what is nothing more than Latin, with scarcely even an English termination to it. We should, for instance, much prefer to import bodily into the translation the words *senatusconsulta*, *plebiscita*, and the like, to seeing such uncomfortable looking words there as "Senatus-consult," and "plebiscit." And a "thing legated by damnation" must look rather an odd sort of thing to the student who comes suddenly upon it without note or comment. As Professor Muirhead has taken "*vindicta*," rightly we think, to be one of the words which it is necessary to retain untranslated, it would have been well that he should have gone a step further, and written "by *vindicta*," when using the word in its ablative form. Or he might have printed it in those cases with the old fashioned mark of the ablative, only we quite see that his principles of Latin orthography are too orthodox, according to the newest fashion of orthodoxy, for such a piece of backsliding on his part. We cannot say that we like this new fashion. It may be very correct, but it is certainly very uncomfortable. And a good many changes are introduced without our being told the reason why. Our old friend the "*Lex Fusia* [or *Furia*] *Caninia*," for instance, becomes, in Professor Muirhead's hands, "*Fusia Caninia*," without a hint of a change. We need hardly say that the great Ulpian himself suffers a sort of "*capitis deminutio*," very real to us, even though "*minima*" as to its extent, and comes before us in mystic brevity, as "*Vlp.*" But these, we suppose, are penalties which we must pay for having been brought up in the old school, and not having cordially accepted the new lights. We quite think, nevertheless, that by whatsoever lights he may be guided, Professor Muirhead is doing good service to scientific jurisprudence by devoting so much time and care to giving us as clear and harmonious a text as may be possible alike of the Institutes of Gaius, and of the Rules of Ulpian. Too often, indeed, our eye is met by foot-notes, telling of a mutilated or an undecipherable text. And from our recollection of the

Verona MS., we do not wonder that it should be so. It is wonderful that so connected a text should, on the whole, have been made out, rather than that so much should yet remain to be done in the way of textual restoration and illustration. But help may yet come, and that from remote quarters. It is but lately that a Græco-Latin fragment of a Law MS. has come to light in that Sinaitic storehouse, which has hitherto gained a fame chiefly in Biblical criticism. The new find, which is edited with the utmost care by M. Dareste, well known for his studies in Greek and Roman juridical epigraphy, in the number for Nov.-Dec., 1880, of our able contemporary the *Nouvelle Revue Historique de Droit* (Paris : Larose), contains extracts from a work which M. Dareste considers to be that of Gaius, "*De Tutelis*," besides other references probably to Gaius. We should have liked to find in Professor Muirhead's notes more matter bearing upon the illustration of Gaius generally. Thus, at the only passage in his *Institutes* where Delegation is mentioned (III., 130), that fact might have been brought out, as it was brought out, in the pages of the French Review we have just cited, by M. Gide, one of its editors, whose loss, like that of M. Machelard, from whom we have also cited thoughtful passages in these pages, is a loss, not only to the French Bar and Professoriate, but to all students of Roman Law. We hope that Professor Muirhead will be encouraged soon to give us more of the fruit of his careful studies in the comparatively little worked field which he has here made his own. For in Great Britain, at least, Gaius has as yet attracted fewer workers than Justinian, and on this account, in part, as well as on account of the necessarily imperfect condition of the text, the study of Gaius has not kept pace with that of Justinian. If the workers in the field are fewer, however, they are certainly a select band. While renewing the expression of our hope soon to greet a fresh appearance of Professor Muirhead's *Gaius*, we feel bound to say that we are encouraged therein by the singularly high standard which, in his case as in that of Professor Lorimer's *Institutes of Law*, we have been glad to find reached by the Law classes in the University of Edinburgh.

Proceedings in an Action in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice. Second

Edition. By SAMUEL PRENTICE, Esq., of the Middle Temple, one of Her Majesty's Counsel. Stevens and Sons, 1880.

The three Divisions of the High Court, of which this treatise sets forth the practice, will doubtless, under the recent Order in Council, soon become in name what they already are in fact, one Division only, that of the Common Law. Such a change, however, will in no way detract from the practical value of Mr. Prentice's work, which pressure on our space has prevented us from noticing in an earlier issue. But little alteration has been made in this edition, except that the Rules of Court and decided cases have been carefully noted and inserted in their proper places. We can safely recommend the book to students, for whose use it is primarily intended, and it will also, we think, be found a handy volume in the Solicitor's office.

Company Precedents for use in relating to Companies subject to the Companies Acts, 1862 to 1880. By FRANCIS BEAUFORT PALMER, of the Inner Temple, Esq., Barrister-at-Law. Second Edition. Stevens and Sons. 1881.

The favourable opinion which we expressed of this work on its first issue, has been justified by the speedy demand for a second edition. Well designed and ably executed, it has proved of much practical utility to the draftsman. The present edition has been thoroughly revised, and while the notes have been carefully brought down to date as regards the references to decided cases and additions to the statute law, numerous fresh precedents have been added, more especially under the headings of "Prospectuses," "Winding-up," "Arrangements" under the Act of 1870, "Private Acts," and "Orders" in actions by and against Companies. To make room for the new matter, without unduly increasing the bulk of the volume, the Provisional Orders of the Board of Trade, which were given in the first edition, have been judiciously omitted. Speaking from practical experience in the use of the volume, we can confidently recommend it to the profession.

A Treatise on the Law of Merchant Shipping. By DAVID MACLACHLAN, M.A., of the Middle Temple, Esq., Barrister-at-Law. Third Edition. W. Maxwell & Son. 1880.

A Treatise on the Law of Merchant Shipping and Freight. By JAMES T. FOARD, of the Inner Temple, Esq., Barrister-at-Law. Waterlow & Sons, Limited. Stevens & Sons. 1880.

The Law Maritime must always command a considerable amount of attention from the authors of works of reference for the practitioner in the various branches of English law. We are not surprised, therefore, that from time to time new writers should appear before us, as in the case of Mr. Foard, while the authors of well-established books, like Mr. Maclachlan, claim our notice for new and carefully revised issues of their texts. Under ordinary circumstances, we should scarcely have been able to do more than announce the publication of a third edition, but Mr. Maclachlan, besides the general work of revision, has taken advantage of the decision of the House of Lords in *Lohre v. Aitchison* to express his views at some length on the very important question involved. The nature of the argument on the interpretation of the "Sue and Labour Clause" in Lloyd's Policy, set out by Mr. Maclachlan by way of appendix to his chapter on Salvage, affords to our minds a good instance of the necessity, upon which we have before now insisted in these pages, of a wide general education for the Bar, such as is best represented by a University training. We find the learned author, in his dissent from the judgment of the House, as moved by Lord Blackburn, resting much upon the philological history of the words "sue, labour, and travel." His contention on this point appears to us to rest on a strong foundation, and we may perhaps offer it some further support by adducing the unconscious testimony of the late Mr. Herbert Coleridge. That distinguished philologist, in his valuable fragment, *A Dictionary of the Oldest Words in the English Language* (London, 1862), embracing "Every word found in the printed English Literature of the thirteenth century," gives references for each of the words in question. For the first of them, viz., "sue," and for "travail," as a substantive, his authority is Robert of Gloucester's *Chronicle* (edited by Hearne, 1810), while for the remaining one, "labour," he refers to the *Life and Martyrdom of Thomas Becket* (edited for the Percy Society). These instances, we think, may fairly be held to carry back the idiomatic catena in favour of Mr. Maclachlan's argument further than he has carried it himself, further by at least a century than the date which he assigns to what he has shown good cause for calling the "English" policy of maritime assurance.

Mr. Foard comes before us with an aim not less useful, though more modest than that of the larger text-books. His object was to provide a "practical synopsis" of that part of the Law Merchant regulating the employment of ships and the earning of freight. To comprise even this portion of the subject within the compass of a single really portable volume, was no easy task. On the whole, we think it has been carried out to a successful issue. The notes bristle with references to an extent which must always call for very careful revision, and it will scarcely surprise Mr. Foard if we say that we have found more *errata* than are accounted for in his list. Thus, Lord Tenterden, for whom, nevertheless, Mr. Foard has a very proper respect, appears in a note to p. 77 as "Tentenden," and under yet another disguise in a passage in the text, p. 224, as "Tenderden." There is, unfortunately, often apt to be a certain amount of hurry at the last, to bring out a book in time for the recurrence of the usual publishing "season," which, no doubt, is answerable for such slips. Even Mr. Maclachlan's very carefully revised issue is not free from antinomies of this kind. In his Table of Cases, he gives us the strange form "*The Evangelissimos*," which looks like a sort of bastard Grecised superlative of the "*Evangelismos*," correctly cited on p. 634. Mr. Foard's text, we think, is worth the close study which it requires, and in these days of pouring forth books upon books on the same branch of law, that is, we take it, no small praise. While the larger and fuller treatises, Arnould, Abbott, Maclachlan, &c., are calculated almost solely for chambers and Court, Mr. Foard's volume would also be a convenient and useful companion of the master mariner on his voyages over sea. Mr. Foard has made good use of the treasures of learning on the history of Maritime Law enshrined in the great collection of M. Pardessus, and in the very valuable Black Book of the Admiralty and other ancient texts, edited for the Master of the Rolls by Sir Travers Twiss. Among useful foreign sources of information, which do not as yet appear to have been consulted by Mr. Foard, our able French contemporary, the *Revue Générale du Droit* (Paris: E. Thorin), has published not a few articles, *e.g.*, a series by M. Levillain, on "The Juridical character of Conventions made during the building of a ship, and the ownership of vessels during construction" (*Revue Gén.*, Nov.-Dec., 1877, *et seqq.*), besides notices of Laurin's edition of Cresp's *Droit Maritime*, Paulmier's and Mallet's works on "Maritime Hypothec," and not least, an

essay on "Maritime Law" (*Rev. Gén.*, March-April, 1879, *et seqq.*) by M. Boistel, himself the author of an esteemed *Précis de Droit Commercial*, which also forms the subject of a notice. M. Boistel's views tend, like those of the principal bodies of jurists and commercial men whom we have seen and heard in divers congresses assembled, towards consolidation and assimilation, if not unification, of the Law Maritime. This, of course, cannot but be a work of time, and requiring the greatest care and attention to the varieties of national character, which will always preserve certain differences. For some, however, it seems hard to find a readily intelligible reason. Why, for instance, should an expenditure for repairs, in a foreign country, at a rate of more than six francs per ton, entail the loss of French nationality, save in cases of necessity (*Goirand's Code of Commerce*, p. 246)? There may have once existed a reason for this singular limitation, but the penalty seems unduly severe. How such a vessel could, under the supposed circumstances, clear out of the port where she lost her *status*, is not very apparent, and her subsequent condition, whether on the high seas, or in jurisdictional waters, would scarcely be pleasant. We observe that Mr. Foard, at p. 102, gives "reasonable deliberation" as the equivalent of the phrase "*délibération motivée*" in the French law. It seems to us that it would be better rendered, both grammatically and juridically, as a deliberation or discussion of which the reasons are stated, and in this view we think we are supported by M. Goirand's excellent *French Code of Commerce* (London: Stevens & Sons, 1880), p. 294. It is there said: "a report of the deliberation [as to jettison] is drawn up, specifying the motives for the throwing overboard, and enumerating the articles thrown overboard or damaged." Mr. Foard gives some useful summaries of the existing English law, with its limitations, and its corollaries, and sometimes suggests points for amendment. He notices throughout American as well as English decisions. This is always a useful feature in a modern law-book. The American and Continental systems are, on the whole, more liberal in their tendency than our own. By studying each other's views, we may arrive some day at a greater uniformity in the "*us et coutumes de la Mer*" throughout the civilised world.

A Treatise on the Law of Negligence. By HORACE SMITH, B.A., of Trinity Hall, Cambridge, and of the Inner Temple, Esq., Barrister-at-Law. Stevens & Sons. 1880.

This is a book of modest dimensions, which, nevertheless, contains a great deal of useful information on the subject of Negligence. The author divides his subject into three classes, viz., neglect of duties requiring—(1) ordinary; (2) more than ordinary; and (3) less than ordinary care. These divisions are in their turn sub-divided into sections, each section dealing with a particular class of circumstances, such as duties by owners of dangerous goods, duties of gas companies, duties by carriers, by owners of ships, &c. We may safely say that in the compilation of this book the author has not been guilty of negligence, but, on the contrary, has given proof of considerable care and attention. There is evidence of a due appreciation of the various subjects under discussion, and of an accurate knowledge of the law which he has undertaken to expound. It is a pity, however, that at p. 44, Mr. Horace Smith did not elaborate the proposition concerning the keeping of infectious animals a little more fully, particularly as in *Mallet v. Mason* (35 L.J. C.P. 229) the defendant was held liable for the loss of cows of the plaintiff, infected through a deceased cow of the defendant, notwithstanding that a jury had found that he was not aware of the disease. Again, the term *under-servant*, somewhat forcibly put forward at p. 65, has rather the appearance of having been coined for the occasion, for it neither has sufficient recognition as a legal phrase to warrant its employment, nor does the Law Report, quoted in support of the argument, make use of the word. But all these faults are trivial, and we shall hope to see ere long a new and improved edition of this useful book.

A Treatise on the Law of Executors and Administrators. By STUART MACASKIE, of Gray's Inn, Esq., Barrister-at-Law. Stevens & Sons. 1881.

We were at first somewhat at a loss how to class this fresh production of an already somewhat teeming legal press. We knew that Sir Edward Vaughan Williams might be said to have covered the whole ground, and we wondered a little where Mr. Stuart Macaskie was making his breach in the hedge of works on the

Law of Executors and Administrators. We have come to the conclusion that he has written for the class specially interested in knowing this branch of law, *i.e.*, those who have to perform the duties enjoined by it, and who are usually laymen. This work, which is a useful one, Mr. Macaskie seems to have done in generally simple language, carefully supported by reference to decided cases. We should prefer the plain "woman" to the somewhat artificial "lady," in the author's text. On page 44, we should have deleted the first "that," after "But it has been held," in the sentence embodying the principle of *Hervey v. Fitzpatrick*. And on page 104, there is a very obvious slip of the pen or press in the sentence, "Where an annuity is *give* to an executor." Of course, we do not for a moment suppose that these little blemishes of style are other than accidental, and we point them out chiefly because there is no list of *errata*, so that they have evidently escaped the author's eye. The book will be acceptable as a guide to a large, and often rather helpless class of persons.

The Testamentary and Succession Laws of the Republic of Chili. Translated and edited by WILLIAM GRAIN, Notary Public. H. Sweet. 1880.

Even after their recent great victory, we should not altogether care to have a succession opening at the present moment in the Republic of Chili; but if such a windfall were to befall us, we should be very glad of the assistance which such a work as the present would afford us. Mr. Grain deserves praise for the pains which he has bestowed upon what is, but too frequently, the somewhat thankless task of bringing an expert's knowledge to bear upon a complicated branch of private international law.

The Law of Italy relating to Concessions, Railways and Tramways, Expropriation, and Companies. Translated and annotated by CHARLES WOODWARD WALLIS, M.A., of the Middle Temple, Esq., Barrister-at-Law. Stevens & Sons. 1880.

This little work deals with a large and important subject, or rather group of subjects. It seems a pity, considering the wide interest felt on what is, to a great extent, the law relating to investments, that Mr. Wallis did not annotate more fully. In

our view, such a book, to be thoroughly satisfactory, ought to partake of the character of a study in Comparative Legislation. Still, we cannot but be glad that the English investor, generally innocent of any knowledge of either the Italian language or the Italian law, should have in Mr. Wallis a guide to whom he may look for the legal provisions which govern his *status* as a shareholder. The whole question of Company Law, as prevailing in the principal countries of the Continent, was very carefully gone into, and very keenly discussed at the International Congress of Commerce and Industry, at Brussels, last September. A special letter to the President was circulated by an Italian member, Com. Carotti, on obligatory notification of their trade name (*raison sociale*) by Firms, proposed in several Italian Draft Laws. It struck us that many suggestions were made at Brussels of value to ourselves, no less than to our Continental friends. We would ask Mr. Wallis whether it would not have been well to have rendered "*periti*" by "experts," adding "as assessors," or "as valuers," according to the circumstances, rather than to render it sometimes by "assessors" and sometimes by "valuers." And we cannot help thinking that "*Vis Major*" would have been a better substitute for "forza maggiore" than the highly technical English, "Act of God."

SMALLER BOOKS AND PAMPHLETS.

In a slim volume of one hundred pages, Mr. Hastings Kelke, M.A., of Lincoln's Inn, has produced a compact *Digest of the Law of Practice under the Judicature Acts and Rules* (Stevens and Haynes, 1880), in which he has recorded the gist of all important practice cases in the Chancery and three Common Law Divisions, decided with reference to the Judicature Acts, in immediate connection with the portions of the Acts and Rules themselves which they interpret. Notwithstanding the necessarily condensed and abbreviated form in which the author's statements are cast, they are very clear, and are methodically arranged. Within a small compass he has compressed the result of much labour and care, and we believe this little tractate will be found useful alike by students and by the general practitioner. A marginal analysis would have materially aided facility of reference.

An Epitome of the Laws of Probate and Divorce, by Mr. J. Carter Harrison, Solicitor (Stevens and Haynes, 1880), provides for

REVIEWS.

Assisted Clerks, reading for the "Final," a sufficiently clear and comprehensive account of the origin and nature of the existing law on the subject of which it treats. It will form a useful introduction to the larger text-books.

Mr. Eddis, Q.C., has done good service both to those who had, and those who had not the opportunity of hearing his lectures at the Inns of Court, by throwing into the shape of a substantive work, his valuable course on the *Administration of Assets in Payment of Debts* (Stevens and Sons, 1880), delivered in 1876. The learned Professor has compressed into the short space of barely more than a hundred-and-fifty pages, an amount of doctrine as well as practice, which will fit the reader who masters the contents to deal with many a knotty point in that great division of jurisprudence which we still call Equity.

The Case of Ireland Stated (Chapman & Hall, 1881), by Mr. T. De Courcy Atkins, B.A., Barrister-at-Law, is a "Tract for the Times," deserving of careful perusal. The author has devoted his energies to tracing historically the evolution of the distress which underlies much of the present agitation. His *résumé* of Irish history is graphic as well as terse, and he has no difficult task in proving that the growth of the native civilisation was arrested by the Anglo-Norman Conquest, while the Anglo-Norman element itself was not so firmly seated that it could consolidate and develop as in England. For a remedy, the outlook does not seem very hopeful. "It is vain," says Mr. De Courcy Atkins, "to talk of meeting such a state of things . . . by the three F's." But failing them, what has he to propose? First and foremost, the creation of peasant proprietorships; secondly, the "three F's." It is obvious, however, that no class of proprietors can be created in a day, and Mr. Atkins should, we think, turn his attention to some immediately feasible palliation. We do not imagine that it could be anything more than a palliative. Time, and the rigorous administration of even-handed justice, combined with a really national education, can alone restore peace.

* * * *Pressure on our space compels us to postpone several Reviews, as well as our "Select Cases."*

THE LAW MAGAZINE AND REVIEW.

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I.—ENGLAND'S TREATIES OF GUARANTEE.

THE so-called treaties of guarantee to which England is a party are very numerous. At the present time, England is liable to be called upon by at least ten European and two American Powers, to fulfil engagements of the most varied and yet of the most doubtful nature—entered into under circumstances which in many cases now no longer exist. The country is bound to maintain powerful States in the possession of territory, and small nationalities in the enjoyment of their privileges; at one time we have constituted ourselves the guardian of a Nation's independence, and at another we have undertaken to prevent any infringement of a State's neutrality. Some of our engagements are absolute, others conditional—some are joint, others several. And as if to complicate our position as much as possible, the terms of many treaties are couched in language so vague and so indefinite, that it is almost impossible to say what we are bound to do ourselves, or what we can call on the other signatories to perform.

Before enumerating or discussing the treaties of guarantee binding on England, it is necessary to point out the loose and inaccurate manner in which the word "guarantee" is often used. The modern treaty of guarantee is not a guarantee in the strict and proper sense of the term. It is really a treaty of alliance, and several writers on inter-

International law have fallen into the mistake of applying to modern so-called guarantees the principles which earlier writers laid down as applicable to guarantees proper.

A guarantee is defined by writers on English law as "a collateral engagement to answer for the debt, default, or miscarriage of another person." It, therefore, implies or presupposes an existing obligation between two or more persons to which it is subsidiary, and the person who gives it only incurs a liability conditional on the non-fulfilment of the principal obligation. The guarantor is in the position of a surety. He undertakes to be responsible for the performance of a duty by another person.

It might be expected that a treaty of guarantee would in the region of international law correspond to a contract of guarantee in the sphere of common law. It would then be defined as a treaty by which one State undertook to be responsible to another State for the due performance of some duty by a third State. This is the view of a treaty of guarantee taken by the earlier writers. The guarantee was a means of securing the due performance of a treaty. It succeeded to the oath and the hostage—for though the oath continued in use until 1777, and hostages were given as late as the peace of Aix-la-Chapelle in 1748, yet in the 17th and 18th centuries they had in many cases been supplanted by a guarantee. An excellent example of a strict guarantee is that connected with the Treaty of Teschen, negotiated in the year 1779, to settle the claims of the King of Prussia and Maria Theresa in regard to the Bavarian succession. It was deemed advisable by both parties that the fulfilment of the treaty should be secured by the guarantee of Russia and France, to whose good offices the treaty was due, and the 16th Article* states that—"Leurs dites Majestés sont requises par toutes les parties contractantes et intéressées, de se charger aussi de la garantie du présent

* Martens, Recueil. Vol. II., pp. 667, 683.

Traité." France and Russia accordingly entered into an "Acte de Garantie," which, after reciting the request made by the contracting parties, enacted that—"Sa Maj. l'Impératrice de toutes les Russies et Sa Maj. le Roi Très Chrétien garantissent le Traité de paix."

This was a strict guarantee. France and Russia, the guarantors, enter into an engagement collateral to another, by which they bind themselves to be responsible for the fulfilment of the principal obligation by the parties to it. The guarantee was a double one, the observance of the treaty by the King of Prussia being guaranteed to Maria Theresa, and *vice versa*.

This is the kind of guarantee treated of by Vattel. After discussing the sacred nature of treaties, he proceeds to consider the various means adopted to secure their due observance, and chief among these he places "la garantie."*

"Une malheureuse expérience n'ayant que trop appris aux hommes que la foi des traités si sainte et si sacrée, n'est pas toujours un sûr garant de leur observation, on a cherché des sûretés contre la perfidie, des moyens dont l'efficacité ne dépendît pas de la bonne foi des contractants. La garantie est un de ces moyens. Quand ceux qui font un traité de paix, ou tout autre traité, ne sont point absolument tranquilles sur son observation, ils recherchent la garantie d'un souverain puissant. Le *garant* promet de maintenir les conditions du traité, d'en procurer l'observation."

He then defines "la garantie" as "une espèce de traité par lequel on promet assistance et secours à quelqu'un, au cas qu'il en ait besoin pour contraindre un infidèle à remplir ses engagements."

He then points out that the guarantor has no right to interfere in the execution of the treaty unless his aid is

* Droit des Gens. By Pinheiro-Ferreira and Pradier Fodéré. Paris, 1863, II. § 235, p. 233.

invoked, and that he is not bound to procure the performance of it, should it militate against the just rights of third parties.

Vattel's view of the nature of a guarantee coincides with that of Puffendorf, who preceded, and of Klüber, who lived after him.

The former, in his work published in 1672,* says:—

“*Quelquefois aussi d'autres Princes ou Etats, surtout ceux qui ont été Médiateurs de la Paix, se rendent Garants de son observation de part et d'autre, par une espèce de Cautionnement, qui emporte un Traité d'Alliance, en vertu duquel ils s'engagent à donner du secours au premier qui sera insulté par l'autre, contre les articles et les conditions de la paix.*”

The latter, in regard to guarantees, says:—“*L'expression de garantie dans le sens général comprend tous les traités dont le but est d'assurer l'exécution d'un autre traité.*”

Coming to modern times and modern writers, it will be found that an entirely new view is taken by text-writers as to the nature of “A Treaty of Guarantee.”

“The convention of guaranty,” says Wheaton,† “is one of the most usual international contracts. It is an engagement by which one State promises to aid another where it is interrupted or threatened to be disturbed in the peaceable enjoyment of its rights by a third Power.”

Such a treaty is in no sense a guarantee; it is a treaty of alliance pure and simple. Wheaton goes on, however, to say:—“The guaranty may also be contained in a distinct and separate convention, or included among the stipulations annexed to the principal treaty intended to be guaranteed,” showing that he was aware of the nature of a strict guarantee. His treatment of the subject is unsatis-

* *Droit de la Nature et des Gens*. Liv. VIII., Ch. viii., § 7. [Leyden, 1759.]

† Wheaton's “*International Law*,” edited by A. C. Boyd. London: 2nd English edition. 1880. § 277.

factory and confused, owing to his not recognising the distinction between guarantees and treaties of alliance in the form of guarantees. The use of the word guarantee will not make that a guarantee which otherwise possesses none of the essential elements of such a treaty.

The principles laid down by Wheaton are to be found in Vattel, but Vattel was careful to draw the following distinction:—

“Je ferai observer à cette occasion que dans l'usage ordinaire on prend souvent le terme de *garantie* dans un sens un peu différent du sens précis que nous avons donné à ce mot. La plupart des puissances de l'Europe garantirent l'acte par lequel Charles VI. avait réglé la succession aux Etats de sa Maison : les souverains se *garantissent* quelque fois réciproquement leurs Etats respectifs. Nous appellerions plutôt cela des traités d'alliance pour maintenir cette loi de succession, pour soutenir la possession de ces Etats.”

Halleck* defines a guarantee in terms similar to those used by Wheaton:—“Treaties of guarantee and of surety,” he says, “are engagements by which a State promises to aid another against any interruption of certain specified rights, such as boundaries, territory, constitution or form of government.”

Abdy gives a definition not less confused:—“Guarantees,” he says, are “additional agreements (*pacta accessoria*) entered into by some powerful State or States for the purpose of maintaining the integrity of a province or territory, the political existence or sovereignty of a State, the right of succession to a throne, or the terms and conditions of a treaty of peace—in fact, being in themselves a kind of treaty in which help is promised in the shape of money or arms to some one or more contracting powers.”† This

* “International Law,” edited by Sir Sherston Baker, Bart. London. 1878. I., p. 235.

† Kent’s “Commentary on International Law,” edited by J. T. Abdy, LL.D. 2nd edition, revised. London and Cambridge. 1878. p. 162.

is not so much a definition of a guarantee as a description of various modern treaties of alliance ; but in the words "additional agreements" (*pacta accessoria*) there is a reference to the guarantee proper. The idea that a guarantee must be collateral to some other obligation is retained, but the object of a guarantee—*i.e.*, to secure the fulfilment of such obligation—is entirely lost sight of. To take the example of the "guarantee" of the neutrality of Luxembourg, to which Dr. Abdy refers, to what other treaty or agreement is that guarantee "additional?" Was not the treaty of guarantee an independent convention, and is it anything more than a mutual alliance between the parties to it, to prevent any one of themselves, or any outside party, from violating the neutrality to which reference is made?

Sir Robert Phillimore correctly classes guarantees, as one of "the means which have been resorted to, for securing the performance of treaties," but in his division of guarantees, he departs altogether from this view. He divides guarantees into—

1. Guarantees "that a nation shall maintain a particular *status* towards all other powers, *e.g.*, of neutrality, which is a condition of the newly erected Kingdom of Belgium."

2. Guarantees "that a particular State, shall do a particular act, *e.g.*, discharge a debt, or resign a territory."

3. Guarantees "to defend the particular constitution, or territory, or particular rights, of a country, *contra quoscunque*."

4. Guarantees "to defend the particular constitution of a State generally against all attacks which may assail it."

Strict guarantees would come under the second class, but all the other classes are special treaties of alliance. The example he gives of his second class is one of the only two which exist. Belgium and Luxembourg are expressly bound to observe a state of neutrality towards all other

States, but Switzerland is not. Is this aspect of the Belgian Treaty, the really important one? Suppose that Belgium made war against a State which is not a party to the treaty, who could complain? Certainly not the invaded State, for Belgium entered into no engagement with it. The contracting parties alone, would have the right to remonstrate with Belgium, inasmuch as the observance of neutrality by Belgium, was the condition on which they promised to secure neutrality to Belgium. The essence of the treaty lies in the undertaking by the contracting powers to themselves respect, and to compel other nations to respect the neutrality of that country, rather than in the observance of neutrality by Belgium itself.

Of modern writers, Woolsey * has more clearly than any other, recognised the true nature of a strict guarantee.

"Treaties of guaranty are to be classed among treaties as it respects their form, and as it respects their objects, among the means of securing the observance of treaties. They are especially accessory stipulations, sometimes incorporated in the main instrument, and sometimes appended to it, in which a third power promises to give aid to one of the treaty-making powers, in case certain specific rights—all or a part of those conveyed to him in the instrument,—are violated by the other party."

It is true some of the examples he gives would scarcely fall under this definition, but that he is aware that a guarantee is often really an alliance, is shown by his statement, "guarantees often extend to all the provisions of a treaty, and thus approach to the class of defensive alliances."

Coming now to the so-called treaties of guarantee binding on England, we find that they may be classified in eight groups.

* "Introduction to the Study of International Law." 5th edition, revised. London. 1879. § 109.

England, by various treaties [see *Hertslet*] contracted at different times, has guaranteed—

1. Neutrality to Luxembourg.
 2. Independence to Greece.
 3. Independence and Neutrality to (a) Switzerland, (b) Belgium.
 4. Independence and Integrity to Turkey.
 5. Possession of Territory to Prussia.
 6. Possession of Privileges to Roumania.
- She has also entered into a long series of treaties of
7. Alliance with Portugal.
- And has entered into
8. Conditional Guarantees with (a) the United States, (b) Honduras, (c) Turkey, (d) Sweden.

I.—NEUTRALITY.

Luxembourg.—By the 2nd Article of the Treaty of London, made between Great Britain, Austria, Belgium, France, the Netherlands, Prussia and Russia, 11th May, 1867, it is declared :—

That “the Grand Duchy of Luxemburg, within the Limits determined by the Act annexed to the Treaties of the 19th April, 1839, under the Guarantee of the Courts of Great Britain, Austria, France, Prussia and Russia, shall henceforth form a perpetually Neutral State. It shall be bound to observe the same Neutrality towards all other States.

“The High Contracting Parties engage to respect the principle of Neutrality stipulated by the present Article.

“That principle is and remains placed under the sanction of the collective Guarantee of the Powers signing parties to the present Treaty, with the exception of Belgium, which is itself a neutral State.”

2.—INDEPENDENCE.

Greece.—Great Britain, France, Russia and Bavaria, by the Treaty of London of May, 1832, declare that “Greece, under

the Sovereignty of the Prince Otho of Bavaria, and under the Guarantee of the three Courts, shall form a monarchical and independent State."

On the renunciation of the throne of Greece in 1863 by Prince Otho, and the ascension of Prince George of Denmark, another treaty was entered into [13th July, 1863] between Great Britain, France and Russia, declaring that "Greece, under the Sovereignty of Prince William of Denmark, and under the Guarantee of the three Courts forms a Monarchical, Independent, and Constitutional State."

3.—INDEPENDENCE AND NEUTRALITY.

(a) *Switzerland*.—Austria, Spain, France, Great Britain, Portugal, Prussia, Russia and Sweden, by a declaration of the 20th March, 1815, annexed to the Treaty of Vienna, declared "that as soon as the Helvetic Diet shall have duly and formally acceded to the stipulations contained in the present Instrument, an Act shall be prepared, containing the acknowledgment and the guarantee, on the part of all the Powers, of the perpetual Neutrality of Switzerland, in her new frontiers." The Helvetic Diet on the 27th May, formally acceded to the above mentioned Declaration.

By Article IV. of the Protocol of the 3rd November, 1815, confirmed by Article III. of the 2nd Peace of Paris of the 20th November, the part of Savoy which was included in the neutrality of Switzerland by Art. XCII. of the Treaty of Vienna, was increased in extent, and the same 20th November—"The Act for the acknowledgment and guarantee of the perpetual neutrality of Switzerland and the inviolability of its territory," was signed by the five Powers, Austria, France, Great Britain, Prussia and Russia. By it the Powers:—

"Declare their formal and authentic Acknowledgment of the perpetual Neutrality of Switzerland; and they Guarantee

to that country the Integrity as well as the Inviolability of its Territory in its new limits, such as they are fixed, as well by the Act of the Congress of Vienna as by the Treaty of Paris of this day." The Powers "acknowledge, in the most formal manner, by the present Act, that the Neutrality and the Inviolability of Switzerland, and her Independence of all foreign interference, enter into the true interests of the policy of the whole of Europe."

By the Treaty of the 26th May, 1857, the King of Prussia, renounced for himself and his heirs, the Sovereign rights over the Principality of Neuchâtel, and the County of Valengin, assigned to him by Article XXIII. of the Treaty of Vienna, and by Article II. of the Treaty it was declared that—"the State of Neuchâtel, dependent henceforward on itself, shall continue to form part of the Swiss Confederation on the same footing as the other Cantons."

(b) *Belgium*.—By Article II. of the Treaty of the 19th April, 1839, dissolving the union between Holland and Belgium, it is provided that the Articles annexed to the Treaty are "placed under the guarantee" of the five Powers.

The 7th of the Articles annexed declares that "Belgium . . . shall form an Independent and perpetually Neutral State. It shall be bound to observe such Neutrality towards all other States."

4.—INDEPENDENCE AND INTEGRITY.

Turkey.—By the Treaty of Paris (30th March, 1856), Great Britain, Austria, France, Prussia, Russia and Sardinia engage "to respect the Independence and the Territorial Integrity of the Ottoman Empire: Guarantee in common the strict observance of that engagement; and will, in consequence, consider any act tending to its violation as a question of general interest."

By a further Treaty, Great Britain, France and Austria,

"wishing to settle between themselves the combined action which any infraction of the stipulations of the Peace of Paris would involve on their part," bound themselves as follows:—

"Art. I. The High Contracting Parties Guarantee, jointly and severally, the Independence and the Integrity of the Ottoman Empire, recorded in the Treaty concluded at Paris on the 30th March, 1856.

"Art. II. Any infraction of the stipulations of the said Treaty will be considered by the Powers signing the present Treaty as a *casus belli*. They will come to an understanding with the Sublime Porte as to the measures which have become necessary; and will, without delay, determine among themselves as to the employment of their Military and Naval forces."

5.—POSSESSION OF TERRITORY:

Prussia.—By Art. XVII. of the Treaty of Vienna, "Austria, Russia, Great Britain and France guarantee to His Majesty the King of Prussia, his descendants and successors, the possession of the countries marked out in Art. XV. in full property and sovereignty"—i.e., part of the Kingdom of Saxony.

6.—PRIVILEGES AND IMMUNITIES.

Moldavia and Wallachia.—The Treaty of the 19th August, 1858, between Great Britain, Austria, France, Prussia, Russia and Sardinia, enacts that "the Principalities shall continue to enjoy, under the Collective Guarantee of the Contracting Powers, the Privileges and Immunities of which they are in possession."

7.—ALLIANCE.

Portugal.—A long series of Treaties—from the year 1373 down to the year 1815—bind England and Portugal together in mutual alliance. In the Treaty of Vienna, of the 22nd

January, 1815, "the ancient Treaties of alliance, friendship, and guarantee" are declared "to be renewed by the high contracting parties, and acknowledged to be of full force and effect." The nature of these Treaties may be judged from the following clause in the Treaty of 1373* :—

"There shall be between the respective kings and their successors, their realms, lands, dominions, provinces, vassals, and subjects whomsoever, faithfully obeying, true, faithful, constant, mutual, and perpetual friendships [*Amicitæ*], unions [*Adunationes*], alliances [*Alligantiæ*], and leagues of sincere affection [*pura Dilectionis fœdera*]; and that, as true and faithful princes, they shall henceforth reciprocally be friends to friends and enemies to enemies, and shall assist, maintain, and uphold each other mutually, by sea and by land, against all men that may live or die of whatever degree, station, rank, or condition they may be, and against their lands, realms, and dominions."

8.—CONDITIONAL GUARANTEES.

(a) *Neutrality of Inter-Oceanic Canal, U.S.*—By the Treaty of the 19th April, 1850, made between Great Britain and the United States, in view of the canal being constructed over Central America, it is agreed that :—

"When the said canal shall have been completed, they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said canal may for ever be open and free, and the capital invested therein secure."

(b) *Neutrality of Inter-Oceanic Railway, Honduras.*—By the Treaty of the 27th August, 1853, signed between Great Britain and Honduras, Great Britain "guarantees the neutrality and security" of the projected Honduras Inter-Oceanic Railway, so long as she would continue to enjoy certain conceded privileges.

* Rymer, *Fœdera. Hagæ.* 1739-44. T. III., P. III. 9.

(c) *Assistance.—Turkey.*—By the Convention of the 4th June, 1878, between England and Turkey, it is agreed:—

“If Batoum, Ardahan, Kars, or any of them shall be retained by Russia, and if any attempt shall be made at any future time by Russia to take possession of any further territories of his Imperial Majesty, the Sultan, in Asia, as fixed by the definite Treaty of Peace, England engages to join his Imperial Majesty, the Sultan, in defending them by force of arms.”

In return his Imperial Majesty the Sultan promises to England to introduce necessary reforms.

By the annex to the Treaty it is further agreed, “That if Russia restores to Turkey, Kars, and the other conquests made by her in Armenia, during the last war . . . the Convention of June, 1878, will be at an end.”

(d) *Assistance.—Sweden.*—By the Treaty of November 21st, 1855, in return for Sweden stipulating not to cede to Russia any territory, Great Britain and France “engage to furnish to His Majesty, the King of Sweden and Norway, sufficient Naval and Military Forces to Co-operate with the Naval and Military Forces of his said Majesty, for the purpose of resisting the Pretensions or Aggressions of Russia.”

Examining the terms of these treaties, it may be remarked:—

(1.) That they are all treaties of alliance. They are not strict guarantees, either in form or substance. Substitute the words “agree to protect” for the word “guarantee,” and the scope of any of them is not altered. The conditional guarantees are the simplest, inasmuch as they are made between two parties only, and do not raise any difficult questions regarding joint and several liability. Take the Turkish convention, and assume that the condition imposed is fulfilled by Turkey; then it is at once seen that this so-called guarantee is an alliance between Turkey and

England, for the protection of the Asiatic dominions of the former. It is not, however, an ordinary offensive and defensive alliance, when the obligation is generally of a mutual character. No obligation is imposed on Turkey to defend the territories of England, either in Asia, or in any other part of the world. What would be the position of England in case the integrity of Asiatic Turkey were attacked? The answer undoubtedly must be that England would be bound to defend Turkey as if the territory were its own. To use the words of the Marquis of Salisbury, when referring in 1871, in the House of Lords, to the guarantee of Turkish territory by former treaties :—"From the moment the guarantee was entered into, the frontier of Turkey became as the frontier of England—indeed, something more, for you can deal with the frontier of England with loss but without dishonour, whereas you cannot abandon an inch of Turkish frontier without forfeiting your plighted honour."

In so far as one of the parties undertakes to the State guaranteed, that the other Powers shall observe the treaty, it may be admitted that you have an approach to a guarantee proper. But it is extremely doubtful that France, for example, would consider herself bound in the case of the Tripartite Treaty to compel England and Austria to carry out its provisions. In that case the guarantee is expressed to be several and joint. It might be fairly argued that the word "several" implies no more than the due observance of the treaty by the Powers individually. In the majority of the treaties, there are no words to show that any one, or any greater number of the Powers, short of the whole number, guarantee that the remaining Power or Powers shall observe the treaty.

(2.) With the exception of the three conditional alliances, the main obligation of each treaty is binding on a number of States, but only in two, or perhaps three, are any words

expressly used to indicate that the obligation is joint. The neutrality of Luxembourg and the enjoyment of their privileges by Moldavia and Wallachia are stated to be under the "*collective guarantee*" of the contracting parties. A rather vague phrase is used in the Treaty of Paris, in regard to the independence and integrity of Turkey, which is stated to be guaranteed "*in common.*" It might be urged that the words "*in common,*" imply a guarantee which is joint, but it is obvious that they are open to several other interpretations. Again, whilst the neutral states of Belgium and Luxembourg are required to observe a state of neutrality towards all other States, no such condition is imposed on the neutral State of Switzerland. It may be argued that such a condition is implied, inasmuch as it would be impossible to maintain the neutrality of a State which of its own accord rushes into war. Still the treaty with Switzerland remains a good illustration of the indefinite manner in which treaties are framed.

(4.) The nature of the obligation imposed by the above treaties is of such a vague character, that a particular signatory Power would find little difficulty in giving good reasons for holding aloof in case it was unwilling to resent a supposed breach of the treaty. As has been pointed out, there is nothing in the majority of these treaties to show clearly whether a signatory could take on itself the duty of insisting on the observance of the treaty, or whether if one decline to interfere, the duty of compelling the observance of the treaty would still rest on the other parties to it. With the exception of the case of the Swedish Treaty and the Turkish Convention, there is no promise of actual assistance in the form of arms or men. Indeed, in the Treaty of Paris the consequence of the guarantee is stated to be such, that any violation of the treaty will be regarded as a matter of "*common interest.*" The fact that England was not called on by Austria and France to fulfil the conditions of

the Tripartite Treaty, was regarded by the late government as a sufficient reason for declining to treat the invasion of Turkey by Russia as a *casus belli*. The uncertainty of the obligation imposed by guarantees was prominently brought out by Lord Derby in a debate in the House of Lords, in March, 1878. "When," he said, "you recognise and guarantee the independence and integrity of a nation, you certainly give some pledge that you will endeavour to prevent that integrity and independence being violated, though it may be a question how far you will go in your efforts for that object."

(5.) The changes that have taken place in the Ottoman Empire raise grave doubts whether or no the guarantee of Turkey, entered into by the Treaty of Paris, and the Tripartite Treaty, is still of full force and effect. The subject has been discussed both in the House of Lords, and the House of Commons. Lord Beaconsfield admitted that there was considerable doubt whether these treaties were still binding, but the then Attorney-General in the House of Commons asserted, "without fear of contradiction," that the Tripartite Treaty "was still in force, was still in existence." He said so on the ground that "No Power having entered into a treaty, could abrogate it, except with the consent of all the other Powers," and in regard to the Treaty of Paris, the Treaty of Berlin had preserved all the provisions of that treaty, which were not expressly altered.

All this is undoubtedly true, but does not touch the real question at issue, as far as the Tripartite Treaty is concerned. Admitting that the Treaty of Berlin affirmed the Treaty of Paris, except in so far as it varied its terms, no reference was made in the Berlin Treaty to the Tripartite Treaty. In the case of the latter treaty the question is—has there been such a change in the circumstances under which the treaty was made, and in the objects contemplated by it, as practically to abrogate it?

Sir John Holker in dealing with this argument, referred to it, as one which he should have thought, "would have made the hair of his hon. and learned friend [Sir Wm. Harcourt] stand on end." But Vattel (Bk. II., chap. XVII., sec. 297) expressly states, "If it be certain and manifest that the consideration of the present state of things was one of the reasons which occasioned the promise—that the promise was made in consideration, or in consequence of that state of things—it depends on the preservation of things in the same state."

He admits that the rule ought to be applied with caution.

Klüber (Droit des Gens, by Ott, sec. 165) adopts the same principle, "Les Traités cessent encore d'être obligatoires, lors du changement essentiel de telle ou telle circonstance, dont l'existence était supposée nécessaire par les deux parties (*clausula rebus sic stantibus*), soit que cette condition ait été stipulée expressément, soit qu'elle résulte de la nature même du traité."

Heffter (Droit International, sec. 98) also lays down the principle that a party may refuse to fulfil a treaty, "à cause d'un changement des circonstances survenu depuis la conclusion du traité et non prévu, lorsque, d'après l'intention évidente des parties, elles en formaient la condition tacite."

A similar principle is recognised by Wheaton, Phillimore, and other writers.

If, then, the Tripartite Treaty was entered into by England in consideration of circumstances which now no longer exist—circumstances so essential and material as to practically amount to a condition on which the validity of the treaty was to depend, England would on grounds of International Law be justified in treating the treaty if not as void, at least as voidable.

The Tripartite Treaty was supplemental to the Treaty

of Paris. It expressly states that its object was to settle "the combined action" which any infraction of the latter treaty would involve.

The independence and integrity which is guaranteed is not the absolute independence and integrity of Turkey, nor even that independence and integrity subject to any modifications that might be afterwards introduced, but the independence and integrity of the Ottoman Empire "as recorded in the treaty concluded at Paris on the 20th of March, 1856." The Treaty of Paris not only fixed the limits of the Empire, but curtailed both its independence and integrity. The former was limited by the clauses forbidding the Porte to maintain any vessels of war in the Black Sea, by the restriction of the sovereign rights of the Porte over the Principalities, and by the necessity imposed upon the Porte of consulting the contracting parties before resorting to force in case of any misunderstanding with the Powers. The latter was limited by Moldavia and Wallachia being constituted into separate principalities subject only to the suzerainty of the Porte, and by the grant of a separate administration to Servia, under the guardianship of the Great Powers. It was an independence and integrity with such limitations that England bound itself by the Tripartite Treaty to maintain by the sword.

Have any essential changes occurred since 1854 in the state of things contemplated by the Tripartite Treaty? Without entering into a discussion of this very important question which would be foreign to the object of the present paper, reference may be made to the following events which have happened, and which must be taken into consideration in any answer that may be given :—

(1.) The independence and integrity of the Ottoman Empire no longer exist, as fixed by the Treaty of Paris; but have been curtailed, and curtailed to a most material extent. The following table taken from the *Statesman's*

Year Book, shows in a striking manner, the effect of the Treaty of Berlin on the Turkish Empire:—

| Turkey in Europe before the Treaty: | Areas in Eng. Sq. Miles, 138,264. | Population, 8,315,000. |
|--|---|---------------------------|
| Cessions under the Treaty:— | | |
| Bulgaria (Tributary) | 24,360 | 1,859,000 |
| Eastern Roumelia (Tributary) ... | 13,500 | 751,000 |
| Bosnia and Herzegovina (occu- pied by Austria) | 28,125 | 1,061,000 |
| Roumania, Servia, Montenegro (Independent) | 10,251 | 369,000 |
| Total Cessions | 76,236 | 4,040,000 |
| Actual Turkey in Europe | 62,028 | 4,275,000 |

(2.) Two of the three parties to the Tripartite Treaty have, though under treaty stipulations, occupied part of the Turkish territory, the integrity of which was the object of the treaty. Austria has occupied Bosnia and Herzegovina, England has occupied Cyprus.

(3.) When the integrity of the Empire was attacked by Russia, no one of the parties to the treaty took the course of action laid down by the treaty, *i.e.*, considered the action of Russia as a *casus belli.*, or, it should be added, called on any of the other parties to adopt that course.

(4.) One of the parties to the treaty has entered into another treaty of such a character that the strict observance of both treaties by that party is impossible. By the Turkish Convention, England, by herself, undertakes if Russia

attacks the Asiatic dominions of the Porte, to join the Sultan in defending them by force of arms.

But by the Tripartite Treaty, England in such a case would also be bound "to come to an understanding," along with Austria and France, "with the Sublime Porte as to the measures which have become necessary, &c."

(5.) The Porte has systematically violated the Treaty of Paris by not introducing the reforms therein promised, and the introduction of such reforms was one of the considerations which led to the guarantee of the Turkish Empire by the Powers.

If such be some of the characteristics of existing treaties of so-called guarantee, the practical question arises, is a nation ever justified in entering into such a treaty? Looking at the benefits Europe has gained from the establishment of the independence of Greece, and the maintenance of the neutrality of Belgium, the answer must be in the affirmative. It is only by treaties of alliance of such a kind that a concert of European opinion can be brought about to obtain such results. It must, however, be remembered that in these two cases the stability of the treaty lies not so much in the existence of the treaty itself as in the advantages gained by the Signatory Powers in maintaining the treaties intact.

The inherent drawbacks to modern treaties of guarantee are numerous:—

1. Such treaties are liable to be made an excuse for war. A State which under a guarantee has an interest in the affairs of another State may make that a ground for making war. It was in virtue of the guarantee entered into by the Treaty of Westphalia that Austria and Prussia in 1792 took up arms against France for attempting to suppress the rights of the German princes in Alsace—a province over which France had in 1648 obtained sovereign rights.

2. Unforeseen events are always liable to occur and affect fundamentally the circumstances under which the guarantee was given. It might be urged that the treaty then becomes void, but then also, the great difficulty arises of determining what change of circumstances will be sufficient to make void the treaty. No International Tribunal exists to determine such delicate points, and unless the dispute could be arranged by diplomatic correspondence or friendly arbitration, the stronger Power would soon determine in its own favour.

Apart, however, from such an aspect of the principle laid down, there is little doubt that if the changes which have occurred in the Map of Europe could have been foreseen, many treaties which now exist would never have been signed. At the time of the Peace of Westphalia, Sweden and France were two of the great Powers of Europe. Russia was an Asiatic State, and Prussia a German State only. Now Prussia and Russia are two of the greatest military Powers on the Continent. Sweden has ceased to take any active part in the political system, whilst new States and new Nationalities have attained a recognised position in the family of nations.

Such changes in the European family of States expose a guaranteeing power to one of two dangers. (1) It may disregard the treaty and expose itself to a charge of violating its engagements, or (2) it may go to war in defence of a treaty into which it ought never to have entered. In order to avoid the possibility of having to adopt either course, it has been suggested that instead of making treaties of guarantee perpetual they ought to be entered into for a limited time—all parties to be at liberty to renew the treaty if deemed expedient. Such a course undoubtedly would have its advantages, but, on the other hand, would it not invite attack at the expiration of the time agreed upon? It might so happen that the treaty would expire during a European war, and the guaranteed State lose its safeguard at the time it

was most required. The better way to provide for new political combinations would be to revise the treaty, and by altering the stipulations, or even changing the signatories acknowledge the new order of things.

3. The vagueness of the obligation incurred in a treaty of guarantee weakens the moral duty to fulfil the treaty. A leading member of the late Government once stated in the House of Commons that a treaty between two States was as sacred as a contract between two individuals. If he meant that treaties ought to be held as sacred as contracts, he was laying down a principle which no one would dispute, but which does not place the theory of the obligation of treaties on a very high or secure ground. Many classes of contract, instead of being regarded as sacred, are by our laws held to be of no binding effect. Treaties which are imposed at the point of the sword by a victorious State correspond closely to contracts obtained by duress; but whilst the latter are not regarded as valid, the former are by International Law held to be binding.

Two observations may be made on the obligation of treaties. (1.) As a fact, the obligation of treaties has always been more or less weak. From the earliest times up to the present day, States have found it necessary to resort to various devices to strengthen the force of the obligation. Religious sanctions, pledges, hostages, and securities have all been used at different periods as a means for securing the due observance of treaties. And in our own days Germany deemed it necessary to occupy a large portion of French territory in order to secure the fulfilment of certain clauses of the Treaty of Versailles.

(2.) The weakness of the obligation to fulfil a treaty is naturally to be expected, for—

(a) The perception of moral duty is not so clear in the case of States as in individuals. It is well known that a body of men will do acts from which a high-minded in-

dividual would recoil, and that probably because, the sense of duty of the entire body will not be higher than what might be called the average sense of duty of the individual member. The individual is more likely to feel the responsibility for his conduct than an absolute sovereign or a ministry.

(b) The treaty-making power, being generally lodged in the hands of the sovereign, or of a sovereign acting by the advice of a council or cabinet, is liable to be abused. The interests of a dynasty or of a party may lead to a State being committed to a treaty which in time proves distasteful to the people at large; and as there are no International Tribunals to enforce treaties, it may happen that when the observance of the treaty is asked the feelings of the nation might make that impossible.

(c) New circumstances are always arising which the treaty did not contemplate, but which its author cannot disregard. When England excluded Russian ships of war from the Black Sea, she did not look forward to the coming of the year 1870, when Austria would have ceased to be a great German Power and France and Prussia be engaged in a deadly struggle. Nor when England guaranteed the possession of Silesia to Prussia, did she ever think Prussia would become the strongest military Power on the Continent.

Is one then justified in concluding that such treaties of alliance as modern guarantees ought never to be entered into? With the existence of the independence of Greece and the neutrality of Belgium as the practical result of such treaties, it must be acknowledged that the guarantee may play a useful and important part in regulating the relations of European States. But looking at the necessary vagueness of the resulting alliance, the future responsibilities it may involve, and the unforeseen events which may occur, such treaties should never be entered into where they are

needless, or where the difficulty can be solved in some other way.

When they are absolutely necessary, care should be taken that, to use the words of Lord Carnarvon—"They shall be not only practicable, but shall have a fair likelihood of being carried into effect. They will be of little value if they carry in themselves the seeds of early dissolution. They must take into account the tendencies and events of nations and the plain indication of events."

If circumstances require it, they should be revised. To consider a treaty as binding, and yet as "thrown into the shade," may be a convenient policy for the time, but it is one which may result in serious complications in the future. The more clearly a State understands its relations to other States the less likely is it to adopt a course of action which may produce misunderstandings and differences. Mutual confidence is the best safeguard for peace, but such confidence cannot exist between States where their relations are determined by treaties in a state of "suspended animation."

J. E. C. MUNRO.

II.—NEW TRIALS IN FELONIES.

THE question whether there should be a new trial in cases of felony after conviction is a question which may possibly not seem of immediate practical interest, but still, as a matter of procedure, may be worth consideration, especially as that procedure is to be dealt with by the Criminal Code Act. One of the sections of that Bill provides that one form of procedure shall be adopted in all proceedings against persons accused of indictable offences, and so, the distinction between felonies and misdemeanours being abolished, we may assume, that if formerly a new

trial were granted in case of misdemeanours a like remedy will be conceded in all cases of criminal offences. How a difference arose in dealing with the distinct classes of felonies and misdemeanours need not here be dwelt upon, but it occurs, as a singular result, that in the higher class of offences and where life was imperilled, there should not have been an appeal allowed, whereas in case of misdemeanours the remedy was open. The ground on which a right of appeal is denied is justified thus, that when once a man has gone through the suspense and distress of mind consequent on a criminal charge of this nature, he should not be again put in jeopardy. And this reason applies with force to the case of a prisoner charged with a felonious crime in the event of acquittal, but why should it not act with greater or a like force when a man has been convicted improperly or irregularly?

In the *Queen v. Scaife*, 17 Q.B. 238, a new trial was granted where there had been a conviction for felony, but this case has been dissented from and overruled in *R. v. Bertrand*, L.R. 1, P.C. 531, and in *R. v. Murphy*, 6 M.P.C., Ca. 177. The *Queen v. Scaife* was an indictment against three prisoners for felony, and it being proved that a witness had been kept out of the way by the procurement of one of the prisoners, the Court held that the deposition of the absent witness was receivable as evidence against the prisoner by whose procurement the witness was kept away, but that it was not evidence against the other two, and that its reception without a direction to the jury, that it was not evidence against the latter, was ground for granting a new trial. The indictment had been removed by *certiorari* from sessions into the Queen's Bench, and sent down to be tried at the York Assizes before Mr. Justice Cresswell, and a *rule nisi* for a new trial was granted on the ground of the improper reception of evidence. It is stated in a note to the case in 2 Den., Crown Ca. 286, that

Mr. Justice Cresswell thought, as the record came from the Queen's Bench, that was the proper tribunal to deal with the case and not the Court for Criminal Appeal. Up to the hearing of that case it was assumed that no new trial could be granted in case of felony, and in *R. v. Bertrand* Sir J. Coleridge observed there was but a single case reported, in which an application for a new trial in felony had been made, and that one in which it had succeeded.

In the *Queen v. Russell*, 3 Ell. and B. 750, Lord Campbell is reported to have said :—" I, for my own part, reprobate the recent speculations as to the propriety of granting a new trial after acquittal for felony and murder. If there be an improper conviction it ought to be set aside, but I hope the same practice will never prevail in the case of an acquittal." The decision in *R. v. Scaife* has been considered an innovation on the settled course of Criminal Law not warranted by practice or precedent, and so in *R. v. Bertrand*, L.R. 1, Privy Council 531, and in *R. v. Murphy*, 6 M.P.C., Ca. 177, it was by the Judicial Committee of the Privy Council not regarded an authority to be followed. Eminent jurists, however, have not adopted this view, and though the dissent of members of the Judicial Committee of the Privy Council is not recorded in any published cases before that tribunal, yet it is believed that the decision in *R. v. Murphy* and *R. v. Bertrand* was not unanimous. A distinction seems to have been forgotten in reference to *R. v. Scaife*; there the indictment, having been removed by *certiorari* into the Queen's Bench, became a record of that Court, and the procedure upon its own records differs from the ordinary practice of trials at *nisi prius*. The Queen's Bench acts on its own supervising jurisdiction over its records, and the trial is not complete till the Court accept the verdict, record the judgment, and pronounce sentence. It, therefore, requires the proceedings to be canvassed, and, so the Judge's report of

the trial has to be considered by the full Court. Thus, if the Court see there have been a miscarriage, and that the finding was not legal, it does not pronounce sentence, whereas in a Superior Court, if the proceedings originate there, judgment must be there given. In *R. v. Scaife* the objection made was as to the reception of illegal evidence, and the prisoner was found guilty; but the Court of Queen's Bench, on review, thought the objection to the evidence well founded, and the verdict was set aside. In that case the Judge intimated to the prisoner's Counsel that as the record came from the Queen's Bench, that was the tribunal for appeal if his decision were erroneous, and thus it is seen that in a case of this kind that Court, supervising its own records, a mis-trial cannot be dealt with by the Court of Criminal Appeal, because that Court does not deal with trials or records of the Queen's Bench. In cases before the ordinary Courts of Oyer and Terminer, Gaol Delivery or Quarter Sessions, if there be a verdict of guilty, sentence is at once pronounced, though execution may not immediately issue, to afford the prisoner opportunity of appealing to the mercy of the Crown, and to these cases the Criminal Appeal Act is applicable, but the supervising power of the Queen's Bench over its own records does away with the jurisdiction, and the removal by *certiorari* of the indictment into that Court enables it to deal with the entire facts of the trial, not according to the discretion of the Court, but according to law, which power of review does not belong to an ordinary Court of Oyer and Terminer. The origin indeed of issuing a writ of *certiorari* is the power inherent in the Queen's Bench of controlling its own records.

The course of trials on Queen's Bench records is stated in *The King v. Holt*, 5 T.R. 445, where Buller, J., lays it down, that on reading the report of the trial, the Court may, if it incidentally appear that justice has not been done, stay the judgment. This does not result in the

exercise of a discretion but in obedience to legal rules. So in *R. v. Ellis*, 9 Dowl. and Ryl. 176, S.C. 6, B. and C. 145, the Court do not say that they had not power to grant a new trial in felony, but their decision is rested on the insufficiency of the objections relied on.

Now this power of review does not belong to an ordinary Court of Oyer and Terminer, and the rule as to not putting a person twice in peril on the same charge cannot apply to a case in which the first trial has been legally abortive. No doubt, if there have been a lawful verdict founded on a valid indictment, there cannot be a second trial on the same charge. This legal principle has been established by various authorities, and it is only necessary to refer to *Thomson v. The Queen* in 6 B and S. 186, for its enunciation. "It was urged (says the Chief Justice) that according to the law of England no man can be put on his trial twice. That maxim means that a man is not to be put in peril a second time after a verdict pronounced on a good indictment. It does not follow that if the first trial has proved abortive, the questions involved in the indictment shall not be submitted to a second jury." But so long as the verdict remains without a judgment the accused is liable to another indictment, because he has no defence founded on the former proceedings. An abortive trial, or a mis-trial, does not preclude another trial. (*R. v. Fowler*, 4 B. and Ald., 276.) There are, of course, difficulties suggestible for new trials in criminal cases; the evidence to establish guilt is necessarily of a higher and more exact kind than what ordinarily might induce a verdict in a civil case, but, on a new trial motion for a prisoner, how could the reviewing tribunal deal with the weight of evidence, or with the doubts which a Jury might have entertained or should not have overlooked? And so in deciding on those points they would be assuming the province of the Jury, and if the new trial were granted, it would be but prejudicing the second

trial. But observations of this kind only lead to an inference that evils might happen, and do not establish that they are inevitable. The deduction from settled cases is in prosecutions in the Queen's Bench for misdemeanours, if a verdict of guilty has been given contrary to the evidence, and not to the satisfaction of the Judge who tried the case, the Court will, on the motion of the defendant, grant a new trial, but it will not be granted at the instance of the prosecutor, unless the verdict has been obtained by some fraudulent or irregular proceeding on the part of the defendants. Now let us see if the Criminal Appeal Act changes matters. That Act is confined to cases before the Courts of Oyer and Terminer, Gaol Delivery, and Quarter Sessions where there has been a conviction. Why? Because an acquittal in a criminal case is in its nature final, according to all constitutional law, on the ground of its being *in favorem vitæ et libertatis*, and hence it may be argued the necessity arises of the Court taking care that no one be convicted except in accordance with settled law. By the 9th section of 11 Geo. IV., & 1. Will. IV., c. 70, it is enacted that upon all trials for felonies or misdemeanours, upon any record of the Queen's Bench, judgment may be pronounced during the sittings or at the Assizes by the Judge before whom the verdict shall be taken, &c., but it is added that within the first six days of the ensuing term a rule may be granted to show cause why a new trial should not be had or the judgment amended, thus expressly recognising the inherent supervising power of the Queen's Bench in cases of felony tried on its own records, and proving that a new trial may be granted. In the *Queen v. Chorley*, 12 Q.B. 515, which was an indictment for obstructing a public footway, and where the defendant had a verdict, the Court granted a new trial, though Lord Denman said the proper course was to stay the judgment; but there was no discussion as to whether, after verdict for the defendant on an indict-

ment, the Court would grant a new trial. If the Court have power to suspend a judgment in case of felony, is it not inferential that there should be an order made for a further trial, for otherwise an accused party would have no protection against a new indictment? Unless a mis-trial in a case of felony is equivalent to acquittal, why cannot the Court set aside a verdict if it can stay a judgment for matter appearing on the Judge's report; and if it find that evidence was received which ought to have been rejected, and that, therefore, the verdict of guilty in such case could not be the legal foundation of a legal sentence, then the course taken in *R. v. Scaife* seems justifiable. But the ground for granting a *venire de novo* in criminal cases is, that there has been an abortive trial, and this necessitates a second trial to satisfy the requirements of justice; and further, that it rests upon some irregularity or miscarriage apparent on the face of the record, where the rule for a new trial is an interference by the Court in the discretionary exercise of a species of equitable jurisdiction for the purpose of relieving a party against a latent grievance. After the rule for a new trial is granted and the trial had thereon, the record is as if no trial but the one had taken place, whereas, on the award of the *venire de novo*, the first trial and the circumstances which rendered that trial nugatory necessarily appear on the record. It would seem that in *R. v. Bernard* the distinction between the tribunal and procedure was not sufficiently considered, and in *R. v. Murphy* the distinction between an award of *venire de novo*, which is granted on what appears on the record, and the discretionary order for a new trial was overlooked. The rule as to not putting a person twice on trial on the same charge does not apply where the first trial has been legally abortive, though where there has been a lawful verdict found on a valid indictment no second trial is allowed on the same charge for the same offence.

This question of new trials in cases of felony after conviction, was part and parcel of a course of lectures on Criminal Law delivered at the King's Inns, Dublin, where I had the privilege of addressing Law students, and during my period of office, Sir Joseph Napier, Ex-Lord Chancellor of Ireland, who, perhaps as much as any living jurist has devoted time and talent to the elucidation of the Science of Law, obligingly furnished me with some notes on the subject, authorising me to avail myself of them as I might think advisable and from these I have in the preceding pages largely drawn, but Sir Joseph Napier's remarks on the procedure, which I subjoin, seem to me very valuable.

"The Criminal Appeal Act is confined to cases before Courts of Oyer and Terminer, &c., in which there has been a conviction. This is founded on the principle of our Constitution, by which an acquittal in criminal cases is in its nature final. (21 Vin., Ab. 478, Pl. 2.) The reason of this exception *in favorem vitæ et libertatis* makes it the more incumbent on the Supervising Court to exercise its control so that no man shall be convicted except in strict accordance with the law of the land. *R. v. Burridge*, 1 P. Wm. 227; *R. v. Poole* 1 Hardw. 26. The Act of 11. Geo. IV. and 1 W. IV., c. 70, was prepared by Lord Tenterden after the case of *R. v. Ellis* had been before him in the Queen's Bench; it expressly recognised the inherent supervising power of the Court in cases of felony tried upon its own records, and that a new trial may be granted in a proper case. But in a case where the Court is bound to stay the judgment, is it to stop there? The party has pleaded not guilty, and he cannot be discharged by the Court from the pending indictment. This difficulty seems to have been first specially noticed in the time of Lord Ellenborough, in a special class of cases, arising on indictments for misdemeanours, in which the Court at first hesitated about suspending judgment on verdicts of

acquittal that were not satisfactory to the Court. Lord Ellenborough said 'that the Court would thereby do indirectly that which if they did directly, would be contrary to the established practice of the Court, that they would in effect be granting a new trial in a criminal case where the defendant had been acquitted.' Afterwards, in the time of Lord Denman, the Court held that they might suspend the judgment in such cases, but that they ought not to make a precedent of granting a new trial. However, in *R. v. Chorley*, 12 Q.B. 515, they held that, as the effect of suspending the judgment was to leave it open to proceed by a new indictment, the direct course of granting a new trial was the most consistent, and had its justification (as Mr. Justice Coleridge said) 'in mere necessity and the requisitions of justice.' This, which had been supposed to be an innovation on the rule of Criminal Procedure, has since been acted on, and is now established. But, in truth, the great constitutional principle of the finality of an acquittal was not properly applicable to cases which, although under the form of Criminal Procedure, were in reality civil trials. Be this as it may, the case of *R. v. Chorley* proceeded on this that judgment on a verdict of acquittal might in some of such cases be suspended, and as the effect would be to leave the party exposed to a new indictment, the consistent and direct course was to set aside the verdict and grant a new trial. (*R. v. Russell*, 3 Ell. and B. 942, and *R. v. Crickdale*, *Ibid.* 947.) Lord Campbell's observations then as to granting new trials after acquittals for felony and murder were made after the verdict of guilty was set aside, and a new trial granted in *R. v. Scaife*, and after the prisoners had been convicted on a second trial and sentenced to penal servitude. That case had been remitted to the Recorder's Court at Hull under a *procedendo*. No suggestion was made that the order for a new trial was open to objection. Lord Campbell says, 'If the conviction ensuing upon a

procedendo is not satisfactory, the Secretary of State was the person to whom application should be made.' (18 Q.B. 776.) This indicates his opinion as to the propriety and regularity of the proceedings, and shows that he must have considered the setting aside the verdict on the first trial as justified by the requisitions of justice. It seems, then, to be clear that when the Court has authority to stay the judgment in a case of felony, there should be an order made for a further trial. If this be not so, the accused party is left without protection against a new judgment. The Court of Queen's Bench in this supervision does not act as a Court of Error. It can do what would not be open to a Court of Error, for it can and is bound to act upon the Judge's report, so far, at least, as to prevent an improper conviction. It would be a strange application of the fundamental maxim that no man shall be put in peril a second time on the same criminal charge, to keep a prisoner under sentence on an illegal conviction, as if it were legal, on the ground that he ought not to have a chance of being duly acquitted, because he would be exposed to the risk of being duly convicted. Unless it can be made out that a mis-trial in cases of felony is equivalent to an acquittal, I cannot see why the Court should not be able to set aside the verdict where it could at least stay the judgment for matters appearing on the Judge's report, or if it found that evidence was received that ought to have been rejected, and that therefore the verdict of guilt in such case could not be the legal foundation of a sentence according to law, surely the requisitions of justice sanction the course taken in *R. v. Scaife*. The cases in which a *venire de novo* is awarded in criminal cases proceed on the assumption that there has been an abortive trial that makes it necessary to have a further trial and satisfy the requirements of justice."

W. HARRIS FALCON.

III.—ECCLESIASTICAL COURTS: THEIR PAST AND FUTURE.

THE independent existence in England of a distinct ecclesiastical judicature dates from the reign of William the Conqueror. Previously, "under the pre-Norman kings, the Church and the State had been practically identical, alike subject to the supreme power of the Witan, by whom Kings, Earls, and Bishops were elected and deposed, and laws spiritual and temporal enacted. The Bishop and the Ealdorman sat side by side at the gemôt of the Shire or Hundred, deciding all causes ecclesiastical as well as civil."* One of the most important of the changes introduced by William was to separate the jurisdiction of the Civil and Ecclesiastical Courts.

By his royal ordinance no Bishop or Archdeacon was allowed to hold pleas of ecclesiastical matters in the Shire or Hundred Court. All such matters were to be tried by the Canon or ecclesiastical law before the Bishop, and at the place appointed by the Bishop. Further, all sheriffs and other lay persons were prohibited from interfering in spiritual matters. We see that there was a distinct demarcation of the areas in which the civil and ecclesiastical judicatures were to act. To maintain his authority as Sovereign over the Ecclesiastical Courts, however, William laid down three Canons of the Royal Supremacy, which were—

1st. That no Pope should be acknowledged or papal letter be received in England without the King's consent.

2nd. That the King's barons and officers should not be excommunicated or constrained by any ecclesiastical penalty without his permission.

3rd. That the decrees of National Synods should not be

* Taswell-Langmead's "Constitutional History of England," 2nd Edition, p. 70, *et seq.*

binding without the King's confirmation. William also imposed a further check on the dignitaries of the Church by changing the tenure of their estates. These were formerly held in frank almoign ; henceforth they were changed into baronies, to be held of the King by military service. This change, of course, aimed at maintaining the King's power over the Church, and at giving him indirectly more control over Church Courts.

From William I. we pass to the reign of Henry II. and to the Constitutions of Clarendon, A.D. 1164.

By these Constitutions the jurisdiction of the Ecclesiastical Courts was further regulated.

They established : (I.) That all clerks accused of crime were to be summoned in the first instance before the King's justices, who should decide whether the case was to be delegated to the Civil or Spiritual Court. If remitted to the latter, an officer of the Crown was appointed by the Crown to watch the proceedings. If the accused clerk was found guilty, he was not to be protected by the Church—(cap. vii.) Thus the distinction introduced by William was continued. We note that the King's Court first decided whether the cause was to go to a Civil or Spiritual Court. The judgment was passed by the Spiritual Court, but it was the King's Court that passed the sentence and inflicted the punishment.

Such spiritual matters as suits of advowsons and presentations were to be dealt with exclusively in the King's Court.

All pleas of debt went before the King's Court.

In suits between laymen and clerks as to land, the Chief Justice was to decide, and to refer the suit either to a lay or ecclesiastical tribunal—(cap. ix.)

In trials of laymen for spiritual offences, held in the

* For the ecclesiastical supremacy of William in Normandy, see *Freeman, Norman Conquest*, III. 185, 319, 382.

Bishop's Court, the laity were to have the benefit of the common law rules of evidence—(cap. vi.)

Excommunication of tenants-in-chief and officers in the King's household was not to be put in force without the King's consent, and in his absence the Justiciar's—(cap. vii.)

Certain other regulations were framed as to the mode of election to bishoprics and abbacies, which was required to be made with the King's consent; clergy were not to leave the realm, and ecclesiastical appeals were not to go further than the Archbishop without the King's consent.

The Constitution (cap. viii.) regulating appeals occurs as follows:—

“ De appellationibus si emergerint, ab archidiacono debent procedere ad episcopum, ab episcopo ad archiepiscopum. Et si archiepiscopus defecerit in justitia exhibenda, ad dominum regem perveniendum est postremo, ut praecepto ipsius in curia archiepiscopi controversia terminetur, ita quod non debet ulterius procedere absque assensu domini regis ”—(Constitutions of Clarendon, A.D. 1164. Stubbs, *Select Charters*.)

Appeals to Rome were an usurpation of the constitutional rights of the Crown. They date from the reign of Stephen (1135-1154). They are not allowed by the so-called laws of Edward the Confessor. They are not mentioned in the Penitential of Theodore (668-690). They were not allowed by William the Conqueror. The Constitutions of Clarendon in Henry II.'s reign made them dependent on the King's assent. The statutes made against “provisors” in the reign of Edward I., Edward II., Edward III., Richard II., and Henry V., forbade them.

But notwithstanding these statutory prohibitions, appeals were made to Rome down to the reign of Henry VIII.

The reign of Henry VIII. introduced a new era in the history of ecclesiastical jurisdiction, consequent upon the Reformation. In the 24th year, of his reign an Act was

passed (24 Henry VIII., c. 12, 1533), intituled an Act to Restrain Appeals to Rome. It was passed in view of the pending appeal of Catherine to Rome and to quash any future appeal she might make after the sentence of her divorce was pronounced by Cranmer.

The preamble of the Act asserted the King's supremacy, and forbade appeal to Rome under pain of præmunire.

The Act regulated the course of appeal, which was to be from the Archdeacon to the Bishop; from the Bishop to the Archbishop of the province; and that in any case touching the King or his successors the appeal was to be to the Upper House of Convocation.

In the 25th year of Henry VIII.'s reign, another Act of the greatest importance as to the constitution of Ecclesiastical Courts was passed. This Act is generally known as the "Act for the Submission of the Clergy to the King's Majesty"—(25 Henry VIII., c. 19, A.D. 1534). The clergy in Convocation had already made submission to Henry, and this Act recorded and confirmed that submission, viz., that they would not enact any new canons or ordinances without the King's licence to make them, and also his approval of them when made.

This Act also abrogated the Canon Law, and was important in this respect. It was affirmed by 2 Elizabeth, c. i. which enacted that a review should be had of the Canon Law, and with such review all canons, constitutions, ordinances, and synods provincial, being then already made, and not repugnant to the law of the land, or the King's prerogative, should be used and enacted.

No such review has yet been held, and upon this statute depends the authority and interpretation of the Canon Law of England.

This statute (25 Henry VIII.) forbade all appeals to Rome in any case whatever, and in lieu of the appeals thus abolished it was declared that appeals from the Archbishop's

Courts should be made to the King in Chancery, and that the King should be empowered to appoint commissioners to hear and determine finally in the cause. The commissioners were termed "Delegates of Appeal."

From this Act we derive the present Court of Final Appeal.

In a recent assembly of the Upper House of Convocation (Thursday, Feb. 10, 1881), his Grace the Archbishop of Canterbury stated that it is upon this statute of the 25 Henry VIII., following upon that of the 24 Henry VIII., that the Reformation settlement is established.

The Act of Elizabeth (1 Elizabeth, c. 1, A.D. 1559) restored the Church of England not to the condition in which it stood (says Hardwick*) at the death of Henry VIII., when the ecclesiastical power had been further limited, but to the condition in which he left it in the 25th year of his reign.

The Delegates of Appeal, established by the Act of Henry VIII., continued to form the Final Court of Appeal for ecclesiastical causes until the reign of William IV.

In 1832 an Act was passed by the Legislature (2 and 3 William IV., c. 92) which provided for a periodical committee of the Privy Council, and transferred the jurisdiction from the High Court of Delegates to the Judicial Committee of the Privy Council.

But in 1873 there was a Reform in our Judicature, and by "the Supreme Court of Judicature Act" (sec. 21 of 36 and 37 Vict., c. 66, 1873), the Queen was empowered at any time by Order in Council to direct that all appeals and petitions which, according to the laws then in force, ought to be heard by the Judicial Committee of the Privy Council should from and after a time to be fixed by such Order, be referred to and heard by her Majesty's new Court of Appeal constituted by this Act. And it was declared that the Court of Appeal when hearing any appeals in ecclesiastical

* Hardwick's "Reformation," p. 338, n. 1., Ed. 1874.

cases should be constituted of such and so many judges thereof, and should be assisted by such assessors, being the Archbishops and Bishops of the Church of England, as shall be directed by general rules made by Order in Council.*

As reference has been made to the statute 1 Eliz., c. 1, A.D. 1558, which empowered Queen Elizabeth to appoint Commissions to hear and determine ecclesiastical causes, it may be well to glance at the Court of High Commission, which was formed on the strength of this statute, though that Court is a thing of the past.

The members of this Commission were appointed "to examine the true state of churches; to suspend and deprive such clergymen as were unworthy; to put other clergymen in their places; to proceed against such as were obstinate by imprisonment, church censure, or any other legal way; to examine the condition of such as were imprisoned for religion, and to discharge them; to reinstate those in their benefices who had been unlawfully ejected in late times."† Perry, in his "Church History," says that to pass this Act "was to go beyond the legitimate province of the Royal Supremacy and to arm the Crown with a new irresponsible power superseding and over-riding all the ancient forms of law and procedure, and able under severe penalties to make its law the absolute law of the Church."

The Act was, however, assented to by the majority of the Clergy; only 189 (besides the 14 Marian Bishops) out of 9,400—or about 1 in 50 being deprived for non-compliance.

The Court of High Commission was abolished in 1640 by 16 Car. I. By 13 Car. II., c. 13, it was declared incapable of being restored, and the creation of any similar Court was forbidden. But in 1686 it was restored by James II. on his sole authority, and by its aid he deprived the Vice-

* See Taswell-Langmead's "Constitutional History," Second Edition, p. 425 and Hook's "Church Dictionary" s.v. Appeal, p. 44.

† Perry's "Church History," p. 257.

Chancellor of the University of Cambridge (Bishop Compton of London), and expelled the President and Fellows (with two exceptions) of Magdalen College, Oxford.

In 1688, however, James II. abolished the Court by the advice of the Bishops (Sancroft and others), as he had been warned by the King of France that William of Orange was contemplating a descent upon England.

Evelyn says of this Court that it "was the whole power of a vicar-general," so undefined was its jurisdiction.

We may now look at the Courts Christian or Ecclesiastical, some of which are still in existence, while others have been abolished at a comparatively recent date. They were, with some local variations, as follows:—

1st. The *Archdeacon's Court*, the lowest in the scale, the Judge of which (appointed by the Archdeacon) is called the Official of the Archdeaconry.

2nd. The *Consistory Courts* of the Bishops of every diocese, held in their several cathedrals, for trial of ecclesiastical causes within the diocese. The Judge is the Bishop's Chancellor or Commissary; and from his judgment an appeal lies, by 24 Henry VIII., c. 12, to the Archbishop of the Province.

3rd. The *Prerogative Court*, which was in each Province, held before a Judge appointed by the Archbishop for the proving and administration of last wills and testaments, the principal being the Prerogative Court of the Archbishop of Canterbury, held at Doctors' Commons.

4th. The *Court of Arches* (so called because anciently held in the Church of St. Mary-le-Bow or "*de Arcubus*," in Cheapside), which had within the Province of Canterbury an appellate jurisdiction in all ecclesiastical causes, with the exception of those which fell to the Prerogative Court.

5th. The *Court of Peculiars* of the Archbishop of Canterbury subordinate to and connected with the Court of Arches.

6th. The *Court of Delegates*, so called because the Judges

(usually three common law Judges of the Superior Courts, together with three or more Civilians) were delegated, and sat, *pro hac vice*, by virtue of the King's commission under the great seal, upon appeals to the King in ecclesiastical causes.

Of these Courts, that of the Delegates of Appeals was superseded in 1832, under the provisions of 2 & 3 William IV., c. 92, by the Judicial Committee of the Privy Council, which, as previous committees had done, was to make a report or recommendation to the King in Council for his decision. By a later Act every Archbishop or Bishop in the Privy Council was to be a member of the Judicial Committee for the purpose of hearing ecclesiastical appeals; and it was required that for such appeals one Archbishop at least should be present. By the Supreme Court of Judicature Act, 1873, the Queen was empowered, by Order in Council, to transfer *inter alia* appeals in ecclesiastical causes from the Judicial Committee to the new Court of Appeal constituted by that Act, the Court being in such causes "assisted by such assessors, being Archbishops and Bishops of the Church of England," as should be directed by general rules to be made by Order in Council. The jurisdiction of the Prerogative Court over wills and administrations was taken away by the Act 20 & 21 Vict., c. 77 (1857), and transferred to the Court of Probate. Lastly, the Court of Arches has recently undergone some modifications and has been re-constituted (it is popularly but, of course, only popularly termed, "Lord Penzance's Court,") under the Public Worship Regulation Act, 1874, and the Supreme Court of Judicature Act.

Allusion has frequently been made to the Royal Supremacy, in virtue of which the present Ecclesiastical Courts have been constituted. We may inquire in what sense the term is employed. Henry VIII. assumed the title of Supreme Head of the Church. Convocation at the time

objected to the assumption, and, after devoting three days to its discussion, determined it could only be accepted with the limiting condition "quantum per Christi legem licet." The statute 26 Henry VIII., c. 1, secured the title to Henry, while unfairly suppressing the limiting condition. This Act vested in the Crown rights and functions formerly usurped by the Roman Pontiff; it obliged churchmen to acknowledge the final decision of domestic courts, and gave the Crown control over the assembling of Convocation.

From Bishop Tonstal's letter to Cardinal Pole, quoted by Burnet (part iii. Records, No. 52), we can glean that by the assumption of the Royal Supremacy, Henry had no inclination or wish to interfere in strictly spiritual matters, but only to maintain his sovereignty over his subjects. The object of his policy was to draw men's minds away entirely from Rome, to assure the King that the English clergy were (to quote his own expressive phrase) more than "half his subjects," and to establish the competency of domestic judicatures alike in spiritual and temporal matters.

Bishop Wordsworth remarks on this matter ("Theoph. Anglic.," p. 275), that the declaration in the Oath of Supremacy was a *defensive protest* against papal usurpations.

Edward VI. and Mary both used the title. Parliament, in the reign of the latter Sovereign, was anxious that the Queen should not be deprived of that supremacy which both her father and brother had enjoyed, but it was afterwards laid aside by her.

Elizabeth substituted for "Supreme Head" "Supreme Governor" of the Church, being persuaded, so Burnet says, by Mr. Lever, a reforming divine, that the earlier form was not suitable. This title was secured to her by Act of Parliament (1 Elizabeth, c. 1, A.D. 1559); but public opinion must have changed, for this Act was only carried, after severe opposition, and by the Queen's tact in explaining

what the term meant. In her Injunctions of 1559, she declared she did not "challenge any more authority than under God to have the sovereignty and will over all manner of persons born within these her realms." This was further explained in Article xxxvii., as modified in 1562.

Ross (*Reciprocal obligations of the Church and Civil Power*) says that both the reforming and unreforming English prelates, in acknowledging the Royal Supremacy, had in mind not matters purely spiritual, but "those which the laws of the kingdom annexed to the episcopal office—viz., the civil institution of Ecclesiastical Courts; the privileges attached to the episcopal character as Lords of Parliament; the civil penalties which followed excommunication, legal protection to their ordinations, and other episcopal Acts."

Bramhall (*Schism guarded*, part 2, Disc. 4, Ox. 1842) says, "Whatever power our laws did divest the Pope of they did invest the King with, but they did never invest the King with any spiritual power and jurisdiction, as witness the Injunctions of Elizabeth; witness the profession of King James; witness all our statutes; witness the public Articles of the Church; but of them all there is not one that concerneth jurisdiction purely spiritual, or which is an essential power of the Keys; they are all branches of the external government of the Church."

Wilberforce (*Principles of Church Authority*, p. 174) says, in speaking of ancient appeals to the Emperor Constantine in the case of the Donatists, that "the Emperor only confirmed that which had been decided by the Church."

It is in view of these remarks on the Royal Supremacy that we have to read the 37th Article, drawn up in 1562 with the assent of both Houses of Convocation, which states that "the Queen's Majesty hath the chief power in this realm of England, and other her dominions unto whom the chief government of all estates of the realm, whether they be ecclesiastical or civil, in all causes doth

appertain, and is not, nor ought to be, subject to any foreign jurisdiction."

It must be conceded, in the words of Chief Justice Hale, that "the supremacy of the Crown of England in matters ecclesiastical is a most indubitable right of the Crown, as appeareth by records of unquestionable truth and authority"—(1 H. H., 75).

The Crown has been constitutionally empowered to establish Ecclesiastical Courts for the adjudication of ecclesiastical causes, and in virtue of this right has established the Court of Final Appeal and Lord Penzance's Court. No law-loving Churchman will or can object to the right of the Crown to establish such courts.

The Lower House of Convocation has endorsed this view in a resolution passed on the 26th and 27th June, 1879, which is as follows:—"That this House, having regard to the History of the Church of England, and the recognition by the Convocations of the Royal Supremacy over all persons in all causes as well ecclesiastical as temporal, is of opinion that the Crown constitutionally receives appeals in all causes from the Ecclesiastical Courts to be heard in the Queen's Court of Final Appeal."

Objections, however, may be justly urged to the constitution of such courts, inasmuch as under present circumstances there is no guarantee that the Judges appointed to adjudicate on ecclesiastical causes are, or will be, *bonâ fide* members of the Church of England. The remedy, therefore, lies in such remonstrance by Convocation, as the representatives of the clergy, as shall secure by constitutional means the adjudication of Church matters, whether of ritual or otherwise, by an authority that would secure the respect of Churchmen, and quiet the present discontent.

The Lower House of Convocation, in a resolution passed 26th and 27th June, 1879, proposed that the Judges in the

Court of Final Appeal should possess the qualifications laid down for certain ecclesiastical Judges in the 127th Canon. This Canon requires that the Judges of Ecclesiastical Courts should be "well affected and zealously bent to religion, and touching whose life and manners no evil example is had."

The question here opened will, no doubt, receive careful discussion at the coming Church Congress at Newcastle-on-Tyne, of which it is announced as one of the agenda. That several different solutions will be proposed may be regarded as certain. That any one of those solutions, or even, perhaps, any compromise between them, will be accepted heartily by all parties, may well be doubted. The causes of difference are deep-seated, and they are not of yesterday's date. They go back a considerable distance in the history of this Church and Realm.

Rather more than thirty years ago, a leading member of the English Bench of Bishops, the late Dr. Blomfield, then Bishop of London, brought into the Upper House a Bill practically designed to transfer the decision on questions of Doctrine to the Bench of Bishops. It was intituled an "Act to amend the Law with reference to the Administration of Justice in Her Majesty's Privy Council on Appeal from the Ecclesiastical Courts," and was a short Bill, consisting only of eight clauses. It had, according to the statements made by lay Lords, in the course of the debate, the assent of the majority of the Episcopate of the day. But it lies in that limbo of obscurity to which so many Bills are condemned. It never became law, and it is, perhaps, less likely to become law in 1881 than in 1850. It had the curious defect, ecclesiastically speaking, of proposing that the questions of doctrine to be submitted by the Judicial Committee to the Court formed by the Archbishops and Bishops should be decided "according to the opinion of the majority of the Archbishops and Bishops present." This was certainly

not providing for the "*consensus moraliter unanimitis*," so vigorously maintained against the decrees of the Vatican Council by the minority in that professedly Œcumenical Synod, and by their Anglican sympathisers. Bishop Blomfield's measure, therefore, would seem likely, unless materially altered, to create rather than to assuage difficulties. Moreover, Ecclesiastics are liable to be influenced by the "odium theologicum" and other considerations, and therefore it is undesirable that matters affecting the Church should be adjudicated on by them exclusively. The infusion of a lay element, experienced in dealing with the laws of evidence and in the interpretation of written documents, is a safeguard and a necessary counterpoise: while the assistance, as Judges, of those who, as Bishops of the Church, may be naturally supposed to have the welfare and interest of the Church at heart, would give additional assurance that justice, which all Englishmen love and bow to, will be secured. Many dangers to the Church will, it is believed, be avoided by appointing such a mixed tribunal as the Court of Final Appeal. The grievances which are felt by many who are not party men in regard to the mode of appointment of the Judge under the Public Worship Regulation Act, and the procedure in his Court, are clearly pressing for a remedy. It is far from likely that the remedy applied will please all sides, but it may at least remove some just causes of complaint against, and dissatisfaction with, the present system. Against the Judges of the land, as a whole, no complaints of a serious character have ever been brought since they shook themselves free of Court influence. And even in the days when they were most subservient to the nod of Royalty or its favourites, there were always some to be found worthy of the best traditions of the English Bench. It is obvious, however, from whatever causes, and whether justly or unjustly, that this confidence, has not been universally

extended to the Judge presiding over ecclesiastical causes, and it is desirable in the interests of Justice that the sources of this want of confidence should be investigated, and that, if possible, all reasonable ground for it should be removed. It may be well to recall the fact that the whole controversy with regard to the judge has arisen by reason of the difference between the statutable mode of appointment and the statutable requirements for the officer so appointed, and the mode of appointment and canonical requirements of the officer who was Dean of the Court of Arches and Official Principal of the Province of Canterbury (and of Canterbury only), before the passing of the Public Worship Regulation Act. It may be necessary to pass an Amending Act in order to effect this. There is no reason, in the nature of things, why such an Act should not be passed. But a measure of still greater importance would still remain for the consideration of the Legislature, viz., an Act for the Codification of the Ecclesiastical Law of England, and for the Simplification of Procedure in Ecclesiastical Causes. Such an Act would not be drawn or passed in a day, but it would entitle those who should bring it forward, whether they succeeded in passing it through Parliament or not, to the high praise of having deserved well of their country by the undertaking of so weighty a *Reformatio Legum Ecclesiasticarum*.

S. T. TAYLOR-TASWELL.

IV.—EXTRADITION AND THE RIGHT OF ASYLUM.

IT is a misfortune which the Right of Asylum shares in common with many other rights, that it is capable of being abused. And when some flagrant instance of such abuse occurs, the political scare to which it has given rise is certain to take the shape of clamouring for the abolition of the right, or, at least, for such a modification as would render it practically of no avail. On such occasions it is well to turn aside from the often excited language of continental journalism, and consider with juridical calmness what is the nature and extent of the right thus called in question, and its position in International Law.

These questions are at the present moment of very widespread interest, and giving rise to keen, even acrimonious debate. It might seem needless to premise that we have no sympathy with regicide, any more than with any other form of murder. And it might seem equally unnecessary to premise that the Law of Nations has no desire to shield regicide as such, any more than any other kind of murder. But in the existing state of men's minds, both in this country and on the Continent, it may be as well to have re-affirmed this.

The two questions of Extradition and the Right of Asylum are inextricably intertwined, and must therefore practically always be taken together. For, of course, it is obvious that every case of Extradition is *pro tanto* the giving up of a portion of the general and ordinarily subsisting Right of Asylum. And on this account, as much as on any other, Extradition is fenced round with precautions in the shape of Treaties specifying most carefully the particular classes of crimes for which, and for no other, it may be allowed. And the fact of the serious controversies which have been carried on between leading nations on the very

point that the person Extradited shall be tried only for the Extradition offence, shows the value which nations, in their calmer moments, feel to be attached to the Right of Asylum as a part of the Territorial Sovereignty and Independence. This is, indeed, to a great extent the root of the matter. If the one right did not involve the other, it is probable, if not certain, that far fewer precautions would have been taken over Extradition Treaties.

The questions before us are in no sense new questions ; they have only come up to the surface once more, under the special circumstances that always do bring them to the surface. In a certain sense they constitute, it might be said, a *bête noire* of International Law. It is well, at a time when feeling is running so high on the subject in some of the principal European States, that we should be able to call attention to the calm expositions of the various phases of the controversy which may be found in the pages of Dr. Spear, and the veteran jurist Hon. W. Beach Lawrence [lost to us, at a ripe old age, since these words were written], as well as in other American and Continental treatises and reviews, and in the reports of the Institute of International Law, and the Association for the Reform and Codification of the Law of Nations.

It is now several years since the subject was first under discussion in both those valuable societies, which, by a sort of application of the "bicameral system," as a recent American writer* happily remarks, are enabled to give a thorough sifting to all questions of the day arising in the *Jus inter Gentes*. The last meeting of the Institute again took it up, and a distinguished Italian penalist, Dr. Emilio Brusa, formerly professor at Amsterdam, now once more in his native country and professor in the University of Turin, has devoted an article to it in a recent

* *American Law Review*, March, 1881. Article by Sidney P. Baldwin on the Berne Conference.

number of our able contemporary, the *Rivista Penale*.* It is well that such varied minds, and from such widely distant lands, should have been led to discuss the question; for where they agree, the agreement may fairly be presumed to be a matter of principle; where they differ, the differences may be due to local or temporary causes.

We have already postulated that no State wishes to protect regicide, from any sympathy with it either in the abstract or in the concrete. We may, perhaps, also assume, as a tendency of modern procedure in these matters, that on proof being made that A. B. and C. D. had plotted such a crime in a State where they were temporarily commorant, either as political refugees or as ordinary alien residents, the general protection involved in the right of asylum would be withdrawn to the extent that the individuals concerning whom such proofs were established would be conducted to the frontier. Whether they would be surrendered to a demand for Extradition on such grounds (the crime being *ex hypothesi*, not an Extraditable one) is a different question, the solution of which, we should maintain, ought not to be attempted in a time of national excitement. The caution with which M. Louis Renault approached this point in the *Journal de Droit International Privé*,† in an article based partly on the Hartmann Case, we desire to preserve here. That case, though it did not eventually assume the shape of an Extradition precedent,‡ remains, nevertheless, very

* Vol. XIII., No. I., Oct.-Nov., 1880. Art. I., "L'Istituto di Diritto Internazionale a Oxford e l'estradizione dei delinquenti." The latest number of the same Review, March-April, 1881, contains further matter on the subject of Extradition, to which we shall refer in the course of the present article.

† 1880, p. 55, *seqq.* "Des Crimes Politiques en Matière d'Extradition." See also the same author's brief summary of the case in the *Revue de Droit International* (Brussels), 1880, p. 230, *seq.*

‡ From a telegram in the *Journal des Débats*, of 20th April, however, there seems a probability that the Hartmann difficulty is about to be revived, through requisitions made to our Government on the part of Russia. It may, therefore, should the English Courts be satisfied, yet become an Extradition precedent.

full of instruction and much to the point in regard to the kind of difficulties which would surround the new-fashioned system of Extradition recently proposed for adoption. It was claimed that a person temporarily resident in Paris, under the name of Mayer, was in reality a Russian subject named Hartmann, who had been pronounced, *in absentia*, triable for the common-law crime of damaging the rails of the Moscow-Kursk line, there being at the time, as between France and Russia, no Extradition Treaty. As a matter of fact it was sufficiently obvious, in that case, that Russia would never have carried matters to the extent to which they were carried, on the resolution of the French Courts that the identity was not proved, if an attempt upon the Emperor's life had not been involved in the fact of the disturbance of the rails. Had the identity of the alleged Hartmann been established to the satisfaction of the Paris Courts, we should almost certainly have seen a repetition of the Lawrence-Winslow controversy, as to the trial of an extradited person for a different crime from that for which the Extradition was granted. For Extradition, of course, it would have been, even though allowed only by comity, and not in accordance with the provisions of a Treaty. The alleged Hartmann, on his release, left France and came to England. As the serious basis of the Hartmann case was Nihilism, combined, as it usually is, with attempted assassination of the Czar, there can be little doubt that the fact of the alleged criminal taking refuge in this country added to the exasperation with which States, not themselves particularly free or constitutional in their government, look upon the white cliffs of Albion. The cry of "Perfidious Albion!" which used, in days long gone by, to be attributed (chiefly by comic writers) to some of our nearest neighbours, is now really and seriously uttered against us by the semi-official Press of Germany. It would seem, if we were to believe a tenth part of what is said about us, that we

are the moral plague-spot on the political map of Europe. But for us, and the refuge which we provide for them, there would be no Nobiling, no Hartmann, no advocates of the universal destruction of the existing social edifice and of the substitution for it of the Great Nothing—which is what we must suppose, for want of more accurate information, to be the aim of Nihilism. It is difficult to meet such accusations with a gravity equal to that with which they are made. But when we find ourselves threatened with the brand of social and political ostracism, with the renewed application of the extremest rigour of a decaying and at best useless Passport system, with the profoundest searching, not necessarily of our hearts, but of our luggage and merchandise, we must confess to being unequal to the struggle for gravity. Yet we do our friends the justice to believe that they are in earnest, for we have long understood that they thought us a very naughty people, and we think we shall not be far wrong in assuming some of the most extreme of recent Press utterances in Berlin to be what is delicately known as “inspired.” Taking them, in any case, as embodying a prevalent current of feeling, we can hardly go so far as to call it thought. We find that we are threatened, not only with the sanctions we have already enumerated, but with the additional and heavier sanction of an International League of Inter-Extraditing States, who are to perform amongst themselves that police which we will not, it seems, perform for them. We do not quite see how this proposed League will bring us to reason, if we are unreasonable, except perhaps, that the States so leagued, may refuse to Extradite to us, if—*quod omen Dii avertant*—we had to ask from any of them the Extradition of a person who should have conspired against the life of the Chief of our State. We sincerely trust that no such case would arise to trouble our relations with the League of which the theoretical foundations have been laid at Herr Wind-

horst's persuasion by an almost unanimous vote of the Imperial German Parliament. There appears, indeed, to have been a slight dubiety of mind on the part of the representative of German Liberalism, Herr Hänel, but as his attitude was only that of an Inopportunist, it does not count for more than the same attitude did in the Vatican Council,—and we know what that amounted to. The Social Democrats kindly abstained from voting, which was perhaps the wisest and most generous thing they could do, as their help would probably only succeed in damaging any cause in which Liberal principles were involved.

Taking the Inter-Extraditing League to have a juridical, though as yet but an inchoate, existence, in virtue of the vote of the German Parliament on the 4th April, 1881, let us consider what appear to be the ideas embodied in its foundation. It is to obtain, so we gather from the *Pall Mall Gazette*, of 5th April, the passing of "International Conventions for the prosecution and Extradition [we should ourselves have reversed the position of these two objects] of persons guilty of murdering, attacking, or conspiring against the life of the chief of the States which shall join the proposed League." On reading the details of this scheme, we are struck with the impression that, after all, this conspiracy against the life of the chief of the State can hardly be so heinous a crime as we had at first imagined, or else surely the Extradition proposed would not have been so carefully limited to the States joining the League. On going further, we are struck with the apparent abolition, *pro tanto*, of national distinctions, involved in the statement that "the nationality of the culprit is to make no difference in the application of the law," followed by the qualification, "except that natives are always to be punished at home." But, then, we should have thought that the nationality did make this difference, that, in the terms of the proposition,

the territorial principle of Criminal Law was still to be maintained, and that surely is a principle which does not require a League to establish it. We cannot, however, quite reconcile this view with that which seems to be involved in the provision that "foreigners residing in strange lands are to be extradited, upon special request, to the Government in whose territory the crime had been committed." Nor is it perfectly clear to us how far the crime is required to have been actually committed, in view of the clauses which embrace "conspiring," and which treat "instigation" as conspiracy. It should be borne in mind that if, as is unfortunately patent to all, there is too much of real conspiracy—against the lives of certain Sovereigns in particular—it is quite possible that there should also be sometimes "bogus" conspiracies, to borrow an expressive Americanism. And few things would be more easy for a highly-zealous and far-reaching secret police service than the discovery of such plots, implicating persons resident in foreign countries. There might even, conceivably, be a disposition on the part of Nihilism itself to help on such discoveries, at the cost of a few lives, perhaps, which would be of no account, considering the objects aimed at, but by means of which authority might be thrown on the wrong scent. For a suspected person to disprove such a charge before the Courts of a State belonging to the proposed League, would, we apprehend, be no easy matter. We do not suppose, of course, that the members of the League would consciously set to work to find subjects for the proposed Extradition, but it would, as a matter of fact, be hard to maintain the alliance without proof being given of its necessity, and there would, doubtless, be plenty of such proof forthcoming in an already heated state of the public mind. For under circumstances of excitement no populace ever stops to think, and we are unacquainted with any police service which does not practically consider the guilt of those whom it arrests as a fore-

gone conclusion.* And if the English nation, as such, can be supposed to have sympathy with "poison, murderers, brigands, and incendiary letters," all of which it is accused of sowing broadcast over Europe, what would not be fore-judged concerning the deed of individuals who might be known for political refugees? Yesterday it was the Jews who were everything that is wicked; to-day it is the turn of the Nihilists and—the English.

It will have been seen, we hope, that much of the present Extradition excitement is attributed by us to temporary causes not likely seriously to disturb European relations. Much also, may, we think, be set down to the general unpopularity of England and Englishmen on the Continent, for which we are ourselves in part to blame, but in part also are simply the victims of "circumstances over which we have no control." There still remains, however, a residue of feeling not accounted for by any of these causes taken alone, though, perhaps, owing some of its strength, consciously or unconsciously, to a mixture of them all, *plus* causes special to the continental mind and to continental politics. And this residue it is, which has already received our attention in these pages, and to which we feel it necessary to recur, as indicating marked tendencies towards a change of front in a very important chapter of the Public Law of Nations. When high juridical authorities, such as Dr. Bluntschli, and the *Revue de Droit International*, itself the organ of the Institute of International Law, and other distinguished writers of various nationalities, and in different reviews, unite in advocating what amounts to a "revision of the whole question of Extradition," it is time to consider what such a proposition involves, and how far, if at all, we

* Police assertions on oath as to identity, even, have been very lately established in a London Magistrate's Court as far from "infallible," to use the delicate terms of the magisterial rebuke.

can go with the suggestion, or whether we must oppose it altogether.

It may safely be laid down, from the evidence before us of the tone of mind on this subject which is widely prevalent on the Continent, that so far at least as that portion of European thought may be homogeneous, any such revision would be in the direction of curtailing the right of asylum, and making some breach, practically, if not ostensibly, in the security of the principle of non-extradition for political offences. We say that this may safely be laid down, because we are unable to understand the language which we have seen used on this question of late years, if such be not its meaning.

It may also be laid down, on similar grounds, that such revision would include another alteration, to which, indeed, it is claimed that we have already given in our adhesion, viz., the abandonment of the non-extradition of natural-born subjects. We use the phrase thus limited, instead of the wider form, subjects—which might seem better to represent “nationaux,” “nazionali,” &c.,—because there might conceivably be a distinction drawn between the two classes of subjects, natural-born and naturalised, if the terms of a given Treaty admitted thereof. And the De Tourville case, it may be well to remember, was that of a naturalised subject. Although it would seem that under one of our latest conventions, that with Spain, we have bound ourselves to deliver “all persons” who appear *primâ facie* to be guilty of an extradition crime, while Spain has maintained the old exception, we do not know that any case has yet arisen of the surrender of a natural-born British subject under an Extradition Convention. The Spanish Convention was signed, it would not, we think, be unreasonable to say, under the immediate influence of a changed current of thought to which weighty expression had been given by the Report of a Royal Commission.

Since the researches and recommendations of the Royal Commission on Extradition were published, however, many changes have passed over the face of European political society. A great fear seems to have laid hold of some countries that all organised government is in danger of being overthrown by a vast network of conspiracy, culminating in the more or less successful committal of atrocious crimes. Under the impulse of this fear, there seems to have grown up a tendency to consider nations which give a broad interpretation to the right of asylum, as *participes criminum*, and to demand of them the curtailment, or what amounts to the curtailment, of that right. Of such nations, it so happens, Great Britain is one of those most resorted to by refugees of all kinds, and therefore—her military impotence being at the same time elaborately established in a high-class English periodical, by a critic belonging to the staff of a great foreign army—Great Britain is, for the moment, one of the best abused States in Europe. It must not be supposed, however, that other countries escape scot-free. Switzerland, which is known to be full of discontented Russians and Poles, to use the mildest language applicable, is also found to be a house that very much requires setting in order. It is scarcely likely that Belgium will, in the long run, be more fortunate, though she does not just now appear to be suffering under such direct forms of censure as Great Britain and Switzerland. We may, perhaps, be permitted to suggest a doubt whether the anathematisers have remembered the Arabian saying that “curses, like chickens, come home to roost.”

We are told that incendiary letters pass our frontier. We greatly regret that there should be persons who write incendiary letters, but it is difficult to see how we can prevent their doing so. The tacitly suggested remedy, no doubt, is an extension of one which has on different occasions been tried in this country, but which never has

been, and we think it may be said, never will be, popular here—viz., the detention and perusal of private correspondence under warrant from the Secretary of State for Home Affairs. If this power, with which the Home Secretary is armed by Parliament, were to be extended as some of our foreign critics clearly desire, it can scarcely be doubted that the revenues of the Post Office Department would be the greatest sufferers, and we doubt whether the Department could stand that long. Short of opening every letter addressed to a continental country, there could be no safety against the departure from our shores of "incendiary" missives. How the postal service would be carried on under such delays, we leave to the lively imagination of our critics. As for an increased severity of passport and custom-house regulations, that would, we believe, effect as much and as little as the suggestion already discussed. It would, doubtless, prove an excellent irritant, if that be the desired object. But we have yet to learn that the most elaborate of Passport and Customs' Regulations have availed to keep out an Orsini and his bombs.

These suggestions, therefore, we dismiss as not requiring serious consideration. It is quite possible, perhaps indeed probable, that alarmed Continental nations may make the pleasure-trips of the British tourist a burden to that awkward but innocent gamboller, who is generally guileless of any understanding why he should feel like a criminal if he has not taken pains to provide himself with a "properly attested" passport. It is quite possible, also, that "all persons and things" coming from our shores will soon be "subjected to rigorous surveillance, as is done in time of plague or cattle disease." There is something imposing, Spad, which might, taken by itself, have been flattering to unreasonings, in the likening of our political naughtiness to changed ce; but the alternative reference to the "Rinderhad been gis the dramatic effect of the threat and reminds

us somewhat of stage-thunder. Still, all these things may be done, probably will be done; will the plague therefore be stayed? Will another Phinees arise and pray? Here, however, we may seem to be treading dangerously near the domain of Theology. And there is plenty of juridical matter still awaiting discussion, more, in fact, than we can hope to compass in the present article.

A recent Belgian writer, M. Wouters, of Ghent, discussing Extradition in the pages of the *Rivista Penale* for December, 1880—January, 1881, says of the non-Extradition of subjects (*nazionali*), that it is the "last relic of the olden Right of Asylum," and distinctly regards it as one which is crumbling to pieces. Yet he admits that the general principles of modern public law do not allow this desuetude, which he, nevertheless, claims to be almost an established fact. We are not sure that a certain ambiguity does not hang about the phrase "Right of Asylum." What does it mean? It has certainly not the significance of that mediæval right, so valuable in its day, whereby a serf who fled to a *communa*, and lived there undetected by his lord for a year and a day, became a free man. All that we understand it to mean is that alien visitors are free to come and free to go; free to reside within the British dominions as long as they please, without anyone saying them nay, provided they do not offend against the law of the land, to which they owe a temporary and local allegiance. Correlative with the duty of the resident alien to bear allegiance to our laws is the duty of our State to afford him protection in life, limb, liberty, and property during the period of his residence among us. That, as we understand it, constitutes his asylum. His liberty, we take it, is not to be infringed upon without just cause, any more than the liberty of the British subject. The question, then, really turns upon the interpretation of just cause. Offence against the law of the land would unquestionably be such cause. When an

offence against the law of his own country is alleged against a commorant alien, it seems obviously necessary that the circumstances should be subjected to judicial investigation, in order that it may be made clear whether or no the general right of protection implied in the alien's sojourn *intra præsidia* has been forfeited. This investigation may be permitted even where, as in the Hoffmann case, no Extradition Treaty exists, for it is, of course, within the competence of a State to accede to a demand for Extradition *ad hoc*, though probably, as in the case we have cited, the demand would be accompanied by the offer of reciprocity in regard to the particular offence charged. But, outside of Treaty stipulations, such surrender can only be, as Heffter puts it, a matter of mutual propriety and utility.

Reduced to the simple proportions which alone are of its essence, stripped of all rhetorical ornament, the Right of Asylum seems to be a simple consequence of the principle of sovereignty. It is identical in kind with the permission which we are all year by year accustomed unconsciously to receive, and more or less to profit by, of visiting and sojourning in foreign countries. We take a ticket from London to Rome, Vienna, Berlin, or Constantinople, without giving a thought to the possibility that some day the Government seated in any one of those capitals might decline to allow us to cross its frontiers. We should like to see the rueful countenances of a band of "personally conducted" tourists under such circumstances. It would be worth the journey to the frontier of the repellent State. The case doubtless appears, when thus put, to be so monstrous as to amount to a practical impossibility. Yet there have been times and countries—neither of them far removed from our shores and our day—when a particular shape of hat or coat, a particular mode of wearing the hair, sufficed to render individuals obnoxious to paternal Governments. How much more, then, may not such a Govern-

ment—and the leg-bone of that political dodo has not yet been sent to the Natural History Department of the British Museum—bar and ban all strangers from an infected country, which it may deem a land of “poison, of brigands, and murderers?” The texts on the subject are quite free from ambiguity. “Every State,” says Heffter (*Droit International*, p. 63), “is free to refuse entrance into its territory to foreign refugees, and to foreigners generally.” That is a doctrine quite broad enough to sustain the accuracy of our hypothetical case. Bavaria, it is clear, might have referred to Heffter, p. 63, in support of a refusal to admit British and American visitors to the Passion Play at Ober-Ammergau. Italy might similarly refuse to let the Briton pass his Easter in Rome; and Austria might yet put an extinguisher on the proposed Vienna Meeting of the International Literary Congress. Only—it would not pay. So we have practically no fear that we shall be turned back from the frontiers even of the rigorous and virtuous German Empire. It may suffice that our luggage shall be searched with an activity of ten thousand dynamite power, and that our tours shall be turned into penitential pilgrimages, by dint of constant scrutiny into the adequacy of our “properly attested” Passports. But we shall be admitted, we doubt not, even into the sacred land, to tread the red Westphalian soil, to shelter ourselves beneath the wings of the single-headed eagle of the Margraves of Brandenburg, and the double-headed eagle of the old Roman Empire, whether borne by Austrian Kaiser or Russian Czar. So far, we have no fear. As for the proposed League, whether it is likely to extend beyond the limits of the States of the German Empire, is a matter which we may at present consider open to considerable doubt. Whether it will be acceptable even to the States of the Empire may also be doubted. It seems to us rather like a revival, in a slightly varied shape, of an Inter-State Extradition Convention, which has already

been tried in Germany, and failed. And it may, perhaps, have this aspect in the eyes of those States. That it will first of all be brought before them is practically a necessity, for, notwithstanding the vote of the Reichstag, Germany could hardly ask other countries to accede to a proposition of this kind unless it had previously been accepted by the States forming constituent portions of the German Empire. And several of them are, according to repute, "kittle cattle" to deal with. It is probable, therefore, that some time will elapse before any formal invitation to join the League shall be addressed to Great Britain. As to the reply which might be made to such a proposition by the unknown Government of that future day, we, of course, attempt no forecast. In the meanwhile, it seems to us very evident that Extradition is one of the questions of the day in International Law, and that no labour will be lost which may be given to the study of the many delicate problems involved in it. If, as would appear, our *criteria* for Extradition are not clearly understood by foreign countries, let us by all means endeavour to make them clear. That there exist doubts under this head is evident. To take but one instance, there is a very recent article in the *Rivista Penale* (Vol. XIII., p. 587) for March-April, 1881, which contrasts the decisions in the De Tourville and Wilson cases. It is very likely that before anything further comes of the resolution in the German Parliament, the question so keenly and ably discussed at the Oxford meeting of the Institute of International Law will have been taken up again by the meeting of the same body at Turin in the coming autumn. On the discussion which took place at Oxford, and the key-note struck by Professor Bluntschli's "Avis," this Review has already passed some criticism (*Law Magazine and Review*, No. CCXXXVIII., November, 1880), and on those points it is, therefore, unnecessary here to say more than that they demand the

very careful consideration which they are sure to receive at the hands of the Institute. But we may note, and not without satisfaction, that the elements of a good discussion are clearly in existence, and certain to be represented at Turin. For among the points taken up by Professor Brusa, in his interesting criticism of the Oxford meeting of the Institute in relation to this particular question of Extradition (*Rivista Penale*, Vol. XIII., No. I.), is this crucial point of the definition of Nihilism, Socialism, and Communism, as extraditable offences. But Professor Brusa argues, Nihilism, *pace* Professor de Martens, however great and terrible an offence, is yet not universal in its character, nor does it need to become such in order to satisfy the aims of its authors. It is, and remains, a Russian evil—and therefore, we may add, to be dealt with by Russia alone—and we are not called upon to erect it into an œcumenical crime against Society, and to assimilate Nihilists to pirates as “*hostes humani generis*.” Whether it would be possible to frame such a definition of a Nihilist as should satisfy a scientific body—a “Senate of Jurists,” such as the Institute of International Law expressly professes to be—it is not necessary here to discuss, for, like Signor Brusa, we do not profess to be treating the question exhaustively, and we shall probably return to it in a future number. But we may remark that the difficulty would seem to be increased when Communists and Socialists are added to the list. For here fresh nationalities, and fresh national quarrels, come to the surface. But they are internal quarrels, we hold, not problems for the solution of International Law. How far it may be possible to define a Nihilist, a Communist, and a Socialist, to the satisfaction of Russian, French, and German members of the Institute respectively, we must leave to the Institute itself to discover, should it undertake the task. Whether any such definitions, even if agreed upon, would avail to the salvation

of society, is a further question. We have heard before now of Saviours of Society and of Public Order. But it may be doubted whether the effect of their apostolic zeal might not, as a rule, be summed up in one sentence:—
"Solitudinem faciunt, pacem appellant."

V.—SELECT CASES. (I.) SCOTTISH.

By HUGH BARCLAY, LL.D.

River—Erection in Alveo.

A riparian proprietor having erected a *cauld* on his own side the *medium filum* for the purpose of improving his salmon fishings: *Held*, that the opposite proprietor was entitled to insist on its removal, and the *alveus* returned to its former condition, without proving damage caused to him by its erection. Per Lord Justice Clerk (Lord Moncreiff): "No proprietor of one side of a stream is entitled to alter the flow of the stream without the consent of the proprietor of the other side, or even of those below." Per Lord Gifford: "Even if such an operation did the pursuer good instead of hurting him, I think he would be entitled to object. Here I think it does injure him; at least, it will most benefit the defenders, and any such operation before it can be looked upon favourably must at least induce *equally* to the benefit of both parties interested." 18 Feb., 1879. *Duke of Roxburgh v. Waldie's Trustees*, 6 S.C., 663.

Public Company—Curator Bonis.

A *curator bonis* sold part of the stock of his ward, and sent the stock certificate to the company, with instructions to prepare a transfer to the purchasers. The company entered the remainder of the stock *in name of the curator* without his knowledge. The curator subsequently subscribed a dividend warrant as curator: *Held*, that as he had never authorised the stock to be transferred from his ward's name to his own he was not liable as a partner. Per Lord President (Inglis): "A *curator bonis*, who sells a portion of his ward's estate, does not necessarily become the proprietor of that estate in order to enable him to sell. He acts under authority of Court, and the Court

gives him authority because the ward is incapable of giving it himself." "The party who acts under authority does not make himself a partner of the bank, nor incur any personal liability in respect of it. He is acting for another, and having full authority he binds that other and not himself." "As to the entry in name of the curator in the stock ledger, it appears to me that the company had no authority from the curator to make such entry. He did not require an entry of the kind to enable him as *curator bonis* to deal with the stock." "If the fact that he is made *curator bonis* does not make him a partner, the statement of the fact in the company's record cannot make him a partner." "And, in like manner, when he receives a new certificate of the remainder of the stock, if there is an inaccurate description in that of what is actually contained in the register, I do not suppose that anybody can be bound by it when we go back to the fact that there is no such entry in the register as the certificate would lead one to suppose. In short, I do not think that a man can be made a partner of a bank by receiving a dividend on a false narrative, or by receiving a certificate of stock with an inaccurate description, the fact being that the original owner of this stock, the ward, is down to this day the only man upon the register in respect of that stock." 21 Feb., 1879. *Lindsay's Curator v. City of Glasgow Bank*, 6 S.C., 671.

Public Company and Liability of Trustees.

Trustees, under a marriage contract, five in number, invested part of the trust funds in a bank. Three of the trustees, as a quorum, subscribed the deed of transfer, and *all* the trustees were entered in the Statutory Register: *Held*, in liquidation, that the whole of the trustees were liable as contributories jointly and severally, and not merely *pro rata*. 21 Feb., 1879. *Cunningham v. City of Glasgow Bank*, S.C., 679.

Master and Servant—Reparation.

Workmen were brought from England by manufacturers in Glasgow to supply their works on the occasion of a lock-out. The Englishmen soon after their arrival left, in violation of their engagement. The masters sued one of their former servants for having induced the foreign servants to leave by threats, promises, and payment of money: *Held*, that it was a sufficient ground of liability that the workmen were enticed or induced to

desert the service. Per Lord Ormisdale: "Every master has a legal right and interest in the services of the workmen whom he has under engagement in his employment, and every person who knowingly and designedly entices or induces such workmen to break their engagement and desert their employment to the injury of the master, commits a wrongful act, for which he is answerable in damages, it being always understood that the injury for which reparation is asked must be the natural and necessary consequences of the wrongful acts complained of, and not merely remotely connected with it." But (Lord Justice Clerk dissenting), the Court held that the case was not proved, and the defendant was assoylized. Many English cases were quoted. 22 Feb., 1879. *Couper & Sons v. Macfarlane*, 6 S.C., 683.

Sale of Heritage—Reservation of Minerals.

A villa with ground about one-third of an acre was sold by missives without reservations. By the title there was a reservation of minerals to the superior, but who could not work them without the feuar's written consent. In an action to compel the purchaser to take the property: *Held*, by a majority, that he was not bound to take the property, the seller not being able to convey the whole subject. Per Lord Ormisdale: "The defender in place of obtaining a title to the piece of ground a *centro ad calum*, as he was entitled to expect and had a right to insist for, in the absence of any stipulation to the contrary, will only do so subject to a reservation in favour of the superiors of the whole coal, stone and other mines, and minerals within the bounds of the piece of ground." Lord Justice Clerk concurred with Lord Ormisdale. (Lord Gifford dissenting): "If this was a mineral estate a reservation of minerals would alter the whole character of the purchase, and might make the subject quite useless for the only purpose for which it was purchased. In the present case, however, I think the reservations and conditions are just such as usually are found to be applied to small plots of building ground in the suburbs of a town." Lord Young, the Ordinary, found the defender bound to accept the title, and his judgment was reversed. 22 Feb., 1879. *Whyte v. Lee*, 6 S.C., 699.

Correi Debendi—Trust.

A. and B., two partners of a firm C. under contract of co-partnery, were bound to advance the capital,—the third partner

not being bound to supply any capital, purchased £1000 of the stock of the City of Glasgow Bank for behoof of their firm. In the list of contributors they were each placed as holders of £1000. A. and B. presented a petition to have each charged for £500 as one-half belonged to each as individuals: *Held*, that A. and B. were trustees for the firm and so jointly and severally liable for the whole £1000. Per Lord President: "These gentlemen hold the stock as joint owners and in a fiduciary capacity, and the result of it is, on the one hand, that the survivor, as it is expressed, will be the sole owner of the shares when the first owner dies, and secondly, that upon the authority of the cases, they are liable jointly and severally on the obligations of partners in respect of the stock so registered." 27 Feb., 1879. *Gillespie and Paterson v. City of Glasgow Bank*, 6 S.C., 714.

Public Company—Register of Members—Trustee in Sequestration.

After the stoppage of a public company the trustee on the sequestrated estate of a shareholder, was entered on the register as trustee on the bankrupt estate, and after the stoppage of the company he was placed on the list of contributories as in his own right, because of some prior arrangements whereby he had agreed to make up a title and transfer to a third party: *Held*, that he was not legally made a partner. Per Lord President: "The petitioner, at the date of the stoppage of the bank, and when its hopeless insolvency was declared, was not on the register, and any attempt to put him on afterwards by the bank officials was, on their part, improper and illegal. Whatever he had undertaken with a third party, he had not so agreed either with the bank or with a seller or transferer of shares. He had, no doubt, agreed with a third party to do something which, if it had been carried out, would, it is said, have put his name on the register, but that was an agreement in which neither the bank nor its creditors nor shareholders had any right or interest." 28 Feb., 1879. *Myles v. City of Glasgow Bank*, 6 S.C., 718.

Public Company—Trust.

Petition to have name removed from list of contributors, on the ground that the petitioner at request of the manager agreed to accept two shares of stock for the bank, as authorised by their contract, and that the manager afterwards agreed to have

his name removed from the register : *Held*, that the petitioner's name being regularly entered on the register he was liable, as a shareholder, to calls, but reserving to him any claim of relief he might be able to establish against the bank or its shareholders after the debts had been paid. Per Lord President: "The petitioner having consented as the representative of a latent trust to become a partner of this bank to the extent of these shares of bank stock, cannot possibly escape from his liability in a question with the creditors by alleging any trust or any arrangement with the bank or any of its officials. The parties for whom the stock is held are not the parties liable as partners in respect of that stock. The parties who are liable are those in whose name the stock stands, whatever recourse they may have against the parties at whose instigation they have become partners, and for whose benefit they hold in trust." English cases were cited. 28 Feb., 1879. *Hunter v. City of Glasgow Bank*, 6 S.C., 728.

Harbour Dues.

The Clyde Commissioners, under an Act (1858), were authorised to levy dues on goods "shipped or unshipped in the river or the harbour, or using any transit shed or warehouse." Timber merchants were in use to float logs to ponds within the limits of the river to be there stored until sold. In 1877 the Clyde trustees for the first time claimed dues on these logs as falling within the schedule annexed to the Act: *Held*, by a majority of seven judges (three dissenting) that dues were not under the circumstances exigible, the more especially that the logs did not enter the deepened channel formed by the trustees or any works constructed by them, though the timber was within the limits of the "*river*." Per Lord Justice Clerk: "It is conceded that hitherto the Clyde trustees have not been in the habit of levying rates or dues on timber to which the conditions expressed in the prayer of the complaint apply, and therefore the question we have to consider is whether the state of possession in this respect is to be inverted or maintained." "The quality of being shipped or unshipped is not an unnecessary or accidental test of the liability of goods to pay harbour or river dues. On the contrary, it expresses and implies the consideration for which the power of rating goods is given, and on which the liability rests, namely, the use of the accommodation and structural work for the loading and

unloading of cargoes." Lord Deas, the Lord President, Lords Ormisdale and Mure concurred with the Lord Justice Clerk. Lord Gifford dissented: "If the suspenders use the river in the sense of the statute they must pay the statutory dues, even although this may subject them to disadvantage as compared with other timber ponds situated in a different locality." Lord Shand concurred with Lord Gifford, and the decision of the Lord Ordinary (Adam), who had held that the dues were exigible, was reversed. 6 March, 1879. *John Laird & Son v. Trustees of Clyde Navigation*, 6 S.C., 756.

Public Company—Trustee.

Two executors accepted the trust: part of the estate consisting of stock in a bank. Two of the three executors granted receipts for dividends. One of these two resigned office, but made no transfer of the shares, nor was intimation made to the bank. The dividends were afterwards paid on the receipt of the other trustee: *Held*, in liquidation, that the executor, tho' he had resigned office, was still liable as a contributory. Per Lord President: "It appears to me that it is impossible to remove this gentleman's name from the register. He was placed there by his own authority, and his name continued in the register down to the stoppage of the bank. It is not matter in the discretion of the officials of the bank to remove a name from the register, nor are they entitled to do so unless they have distinct authority for doing it." 7 March, 1879. *Tochetti v. City of Glasgow Bank*, 6 S.C., 789.

Public Company—Trusts

Two of three trustees purchased shares in a bank, and took the transfers in the name of the three, but unknown by the third. The two signed the transfer as a quorum. The third subscribed a minute approving of the purchase, and also as one of the quorum subscribed a mandate to the bank to pay the dividends on the stock: *Held*, that the third trustee was not entitled to have his name removed from the register. Per Lord President: "The minute is an acknowledgment that the trustees, including himself, and with the approval of the beneficiary, directed the money to be invested in the purchase of the stock." "It is an adoption immediately after the execution of the transfer of that which the quorum of the trustees had done by

signing the transfer." Many English decisions were quoted. 12 March, 1879. *Roberts v. City of Glasgow Bank*, 6 S.C., 805.

Public Company—Parole Evidence to Contradict Writing.

A trustee was assumed into a trust-holding stock in a bank. He subscribed a mandate to pay dividends: *Held* (Lord Deas dissenting): "That it was competent by parole to prove that he was ignorant that the stock stood in his name, and on such proof he was entitled to have his name removed from the register." Per Lord President: "The mandate is quite insufficient as evidence standing alone, and in contradiction to the other evidence in the case, to make out that the petitioner consented to act as a trustee originally, or afterwards acquiesced in his being a trustee, and intended by the subscription to the document to do a trust act in connection with that estate." Per Lord Deas: "If the petitioner had read the mandate, or heard it read, he would have known that it was a document addressed to and intended to be acted on by third parties, and if he did not read or hear it read, he must take the consequences of not having done so." 12 March, 1879. *Gillespie v. City of Glasgow Bank*, 6 S.C., 813.

**Public Company—Married Woman's Property Act,
1877, (40 & 41 Vict., c. 29).**

Held, (1.) where a transfer of stock in a bank is accepted by two persons in liferent and fee, both are held to be partners and liable as contributories in liquidation. (2.) Where a woman at the date of her marriage held stock, the husband, under the Act, was entitled to have his name removed from the register, but was bound to surrender any property he had acquired through his wife. Per Lord President: "Both persons are registered—they have both become partners for their respective presently existing rights of liferent and fee, and have undertaken in these characters all the liabilities of partners." "The obligation was contracted by the lady becoming a partner of the company. No doubt the obligation was not prestatable except when the bank or its creditors required it to be performed, but it was contracted at that date unquestionably, and if I am right in holding that 'antenuptial debts, means debts contracted before marriage, then I think this debt was contracted before marriage; namely, at the date when this lady became a partner of the

bank, and it appears to me that the husband is entitled to be relieved of the obligation for this debt of his wife, upon surrendering any sum of money or other valuable consideration which he obtained upon the occasion of the marriage." 14 March, 1879. *Wishart & Dalziel v. City of Glasgow Bank*, 6 S.C., 823.

Public Company.

The name of a last surviving trustee was retained on the register for six years after his death: *Held*, that though the company was aware of his death, and his executors were not aware of his being a trustee or holding the stock as trustee, yet his estate was liable as his name was on the register at the date of the stoppage of the bank, and that his executors must be placed on the second part of the list of contributories as representing him. Per Lord President: "It is quite impossible for us to order this gentleman's name to be taken off the register. It was properly put there and it has never been taken off by any competent proceedings." 14 March, 1879. *Low's Executors v. City of Glasgow Bank*, 6 S.C., 831.

(2.) CANADIAN: EXTRADITION.

In connection with a subject of considerable importance with regard both to International and Inter-Colonial relations, and to the relations of the Mother Country with her colonies, we think it well to lay before our readers two very recent Extradition cases, reported in the March numbers of our valued contemporaries, the *Canada Law Journal* and the *Canadian Law Times* respectively.

SUPREME COURT OF CANADA, ONTARIO.—Q.B., VACATION COURT, MARCH 11, 1881. *The Queen v. McHolme*.

Arrest in Canada, on Telegram from England, for Larceny: Extradition.

The prisoner was arrested and detained on a telegram from the Chief Constable at Liverpool, saying that a warrant charging prisoner with conspiracy to defraud his creditors, and with committing larceny, was out against him, and that he had absconded to Canada. The prisoner was brought before the police magis-

trate at Toronto, who remanded him under a warrant, but the proceedings were removed into the Queen's Bench by *certiorari*, and a writ of *habeas corpus* was also granted. The detective who arrested McHolme swore that he believed a warrant for his arrest had been issued in England, but the warrant of arrest itself was not produced, nor, of course, was it endorsed by a superior Court Judge here [*i.e.*, in Canada], as required by the Imperial Act, 6 & 7 Vict., cap. 34: *Held* (*per* Cameron, J.) that under these circumstances the prisoner must be discharged, as, under the Imperial Act, persons charged with committing treason or felony in Great Britain and Ireland could not be arrested in the colonies (or *vice versa*) until the warrant of arrest, issued in the country where the offence was committed, was produced and endorsed by a Judge or other officer in the country where the prisoner is arrested.

The learned Judge said, however, that, under the Extradition Act, offenders from other foreign countries [*i.e.*, we presume, countries other than the Mother Country and her colonies] could be arrested on information and warrant issued here [*i.e.*, in Canada], without any warrant from the foreign State; and that there might be a way under the law of this country [*i.e.*, Canada] for protecting the arrest, but he had no right to assume that a warrant had been issued in England until the warrant itself was produced and endorsed.—*Canada Law Journal*, vol. xvii., No. 6, March 15th, 1881.

SUPREME COURT OF CANADA, ONTARIO — COMMON PLEAS,
MARCH 11, 1881.—*Regina v. Brown*.

Extradition — Foreign Indictment — Sufficiency — Statutes in Force.

Held, that the 40 Vict., cap. 25 (D.) relating to the extradition of fugitive criminals is not in force, but that the law and practice is to be found in the Ashburton Treaty, Art. X., and the Statutes, 31 Vict., cap. 94 (D.), 33 Vict., cap. 25 (D.), and the Imperial Act, 33 & 34 Vict., cap. 52.

On an application for the extradition to the United States of a person charged with murder therein: *Held* (Osler, J., dissenting), that, under the above Acts, a certified copy of an indictment for murder found by the Grand Jury of the said foreign country, to wit, Erie County, State of New York, was sufficient evidence of such a charge to warrant the extradition.

Per Wilson, C. J., and Osler, J.: The other evidence set out in the case, documentary and *viva voce*, was insufficient.

Per Galt, J.: Though in doubt as to the sufficiency of the indictment by itself, it was still sufficient when taken in connection with the other evidence.—*Canadian Law Times*, vol. i, No. 6—Occasional Notes—March, 1881.

Both the above cases seem well calculated to illustrate the difficulties which frequently surround extradition cases, the care with which the circumstances of each demand are investigated, and the general reluctance in the judicial mind to refuse extradition if it can fairly be said that adequate cause has been shown. In the *Queen v. McHolme*, the Court was evidently anxious but unable to find some *modus vivendi*; in *Reg. v. Brown*, from the remarks of members of the Court, the case would appear to have been only just sufficiently made out to admit of the extradition. Some such difficulties are probably inherent in this class of cases, and not to be removed by the most elaborate of treaties.

Legal Obituary of the Quarter.

(ENGLAND, SCOTLAND, AND IRELAND.)

AMHURST, Hon. Francis TYSSEN-, of the Inner Temple, Barrister-at-Law, and Member of the Legislative Assembly of Queensland, aged 38. Called 1867. Second son of the late W. G. Tyssen-Amhurst, Esq., of Didlington Hall, and brother of Mr. Tyssen-Amherst, M.P. (who resumed the ancient spelling Amherst, by R. L., 1877). Mr. Francis Tyssen-Amhurst, who was educated at Christ Church, Oxford, B.A. 1865, died on board the P. & O. steamer *Bokhara*, on his way home from Queensland. *Jan. 3.*

AVORY, Henry, Esq., Clerk of Arraignment at the Central Criminal Court, aged 55. Admitted a Solicitor, 1857. Appointed Clerk of Indictments on the Home Circuit, 1845; Deputy Clerk of Assize on the same Circuit, 1858; and Clerk of Arraignment, Central Criminal Court, 1860, in succession to the late Mr. Straight. *April 5.*

BARTON, Richard, of Caldby Manor, Birkenhead, Cheshire, and of the Inner Temple, Esq., Barrister-at-Law, aged 59. M.A. St. Peter's Coll., Camb. Called 1849. J.P. for Cheshire, and High Sheriff, 1875. *April 17.*

BATESON, William Gandy, Esq., Solicitor, Liverpool, aged 64. Admitted 1840. *Mar. 12.*

BEACONSFIELD, Right Hon. Benjamin, Earl of, K.G., D.C.L., LL.D., late First Lord of the Treasury, and formerly a Fellow of the Honourable Society of Lincoln's Inn, aged 75. Lord Beaconsfield, who was eldest son of Isaac D'Israeli, the Author of "Curiosities of Literature," himself very early entered upon the active pursuit of literature. He also devoted no inconsiderable portion of his early life to the study of the law in both branches of the profession, having originally entered into articles with a solicitor, and served about three years. He subsequently joined the Inns of Court, and kept nine terms at Lincoln's Inn, but ultimately abandoned the idea of being called to the Bar. He first sought a seat in Parliament, but unsuccessfully, in 1831. In 1837 he was returned for Maidstone and for Shrewsbury in 1841. In 1847 he commenced his politi-

cal connection with Buckinghamshire, which lasted until his elevation to the Upper House. Chancellor of the Exchequer in Lord Derby's Administration, he became Premier on his resignation in 1868, in which year his wife was created Viscountess Beaconsfield. A second time Premier, 1874-80, in 1876 Mr. Disraeli was created Earl of Beaconsfield, his wife having died in 1872. From 1871 to 1877 he was Lord Rector of the University of Glasgow. In 1862 he was made an Honorary D.C.L. of Oxford. *April 19.*

BEATTIE, George, Esq., Solicitor, aged 35. Admitted 1868. *Feb. 12.*

BEOR, Henry Rogers, of Brisbane, Queensland, and of the Middle Temple, Esq., Barrister-at-Law, Q.C. (Queensland), and late Attorney-General for Queensland. B.A. St. John's Coll., Camb., 1868. Called 1870.

BREESE, Edward, Esq., Solicitor and Clerk of the Peace for Merionethshire, aged 45. Admitted 1857. *Mar. 10.*

BURKE, James St. George, of the Auberies, Essex, and of the Middle Temple, Esq., Q.C., and a Benchet, aged 76. Called 1846. Head of the branch of the Burke Family, to which Mr. Serjeant Burke belonged. *Feb. 25.*

BURKE, Peter, Esq., Serjeant-at-Law, aged 66. Called by the Hon. Society of the Inner Temple in 1839. Q.C. of Co. Palatine of Lancaster, 1858. Received the degree of the coif in 1859. Mr. Serjeant Burke, who was an accomplished classical scholar, and a good archæologist, was elder brother of Sir Bernard Burke, LL.D., C.B., Ulster King of Arms, and was himself a well-known authority on Peerage Law, having been engaged in several of the most remarkable modern cases, such as Shrewsbury, Inchiquin, Dunboyne, Fermoy, &c. He was the author of works on Copyright and on Criminal Law, as well as of a "Life of Edmund Burke," the "Romance of the Forum," &c. He received his early education at the College, Caen, and in later years became Director of the Society of Antiquaries of Normandy, for 1866-7. He inherited his grandfather's estate of Elm Hall, Co. Tipperary, in 1864. *Mar. 26.*

COBBETT, James Paul, of Lincoln's Inn, Esq., Barrister-at-Law, aged 77. Third and last surviving son of the celebrated William Cobbett, M.P. for Oldham. Called 1831. *Mar. 11.*

COBHAM, Nathaniel, Esq., Solicitor, Clerk to the Magistrates, Ware, Herts. Admitted 1829. *Feb. 6.*

CORRIE, William, of the Inner Temple, Esq., Barrister-at-Law, aged 74. Formerly a Solicitor. Called 1836. One of the Metropolitan Police Court Magistrates, 1851; and Remembrancer of the City of London, 1864-78. *Mar.* 24.

COTTON, Edward, of Christ Church, Oxford, and of Lincoln's Inn, Esq., aged 25. B.A. 1878. Eldest son of Lord Justice Cotton. *Feb.* 18.

CRADDOCK, Charles Richard, Esq., Solicitor, aged 79. Admitted 1832.

FARRELL, Thomas, of the King's Inns, Esq., Barrister-at-Law, Chief Clerk of the Court of Bankruptcy in Ireland, aged 51. Called 1861. *Feb.* 20.

FLOUD, Thomas, Esq., Solicitor, Exeter, aged 66. Admitted 1835. *Feb.* 23.

FORSYTH, William Edwardes Henniker, of Calcutta, and of the Inner Temple, Esq., Barrister-at-Law, aged 35. Eldest son of William Forsyth, Esq., Q.C., LL.D., late M.P., for Marylebone. M.A. Trin. Coll., Camb. Called 1869. *Feb.* 23.

FRYER, Henry, Esq., Solicitor, aged 46. Admitted 1856. *Jan.* 24.

GALTON, Theodore Howard, of Hadzor House, Droitwich, and of the Inner Temple, Esq., Barrister-at-Law, aged 60. M.A., Trin. Coll., Camb. Called 1847. J.P. and D.L. for Worcestershire, and formerly Captain Worcestershire Yeomanry Cavalry. *Feb.* 28.

GRAHAM, John MURRAY-, of Murrayshall and Bertha Park, Advocate at the Scottish Bar, aged 72. Called 1831. Mr. Murray-Graham was heir male of the Grahams of Balgowan, and therefore also of Lord Lynedoch, but was not, as has been stated in several of our contemporaries, a *descendant* of the hero of Barossa, who died without issue. In 1857 Mr. Murray-Graham succeeded his cousin Robert Graham of Redgorton, the immediate successor of Lord Lynedoch, in the estate of Bertha Park, under the trusts of Lord Lynedoch's settlements, whereupon he assumed the name of Graham after that of Murray, which had been taken on the marriage of his ancestor Patrick, younger brother of the ancestors of Lord Lynedoch and Robert Graham of Redgorton, with the heiress of Murrayshall. Mr. Murray-Graham was educated at the University of Edinburgh, M.A. 1828, and was J.P. and D.L. for Perthshire. He was author of several works of historical interest. *Jan.* 18.

HAND, Lewis, Esq., Solicitor, aged 61. Admitted 1857. *Mar. 17.*

HERIOT, Frederick Lewis MAITLAND-, of Ramornie, Advocate at the Scottish Bar, aged 62. Called 1839. Educated at the University of Edinburgh, was for some years Advocate-Depute, and in 1862 was appointed Sheriff of Forfarshire. J.P. and D.L. for Fifeshire, and J.P. for Edinburgh. *Mar. 7.*

HERON, Denis Caulfield, Esq., Q.C. (Ireland), and Third Queen's Serjeant, aged 55. Called to the Irish Bar, 1848. Bencher of the King's Inns, 1872. Educated at Trin. Coll., Dublin, B.A., 1845; LL.D., 1857. J.P. for Cos. Armagh and Down; was Law Adviser of the Irish Government at the time of the Fenian disturbances, and received the appointment of Third Serjeant from the present Administration, on whose behalf he was engaged during the late State trials; was M.P. (Liberal) for Tipperary, 1870-74; and was one of the first Professors (Jurisprudence) in Queen's College, Galway. *April 15.*

HODGKINSON, George, Esq., formerly a Solicitor, Newark, aged 62. Admitted 1839. J.P. for Co. Nottingham, and the borough of Newark. M.P. (Liberal) for Newark, 1859-74. *Feb. 15.*

HODGKINSON, George Wagstaffe, Esq., Solicitor, Rotherham, aged 38. Admitted 1865. *Mar. 24.*

HOLROYD, Edward, of Gray's Inn, Esq., Barrister-at-Law, aged 86. Called 1826. Third son of the late Mr. Justice Holroyd. Practised for some time as a Special Pleader under the Bar. Appointed 1827, by Lord Lyndhurst, a Commissioner of Bankruptcy, and in 1831, by Lord Brougham, a Commissioner of the new Court of Bankruptcy. Was Senior Commissioner at the abolition of the Court, 1869. *Jan. 29.*

HOWARD, Robert Moreton, of Broughton Hall, Wrexham, and of the Inner Temple, Esq., Barrister-at-Law, aged 25. Called 1878. B.A. Trin. Coll., Camb., 1877. *Jan. 29.*

JACKSON, the Hon. Sir Henry Mather, Bart., of Llantilio Court, Abergavenny, and of Lincoln's Inn, one of the Justices of the Queen's Bench Division, Her Majesty's High Court of Justice, aged 49. Eldest son of the late Sir William Jackson, first Bart., of the Manor House, Birkenhead, Cheshire, formerly M.P. for Newcastle-under-Lyme. Educated at Harrow, under Dr. Vaughan, and at Trin. Coll., Oxford, where he graduated in 1853, taking a second-class in Classics. Called to the Bar by the Hon. Society of Lincoln's Inn in 1855, he commenced practice as an equity draftsman and conveyancer, and soon acquired a

reputation as a company lawyer. Q.C., 1873; Bench of his Inn, 1875. M.P. (Lib.) for Birkenhead, 1865; for Coventry, 1867; but was defeated at the general election in 1868. Returned again for Coventry in 1874; continued to represent that borough until his promotion to the Bench. His illness consequent upon the too great strain of combined Parliamentary and legal work, and premature death before he could enter upon the duties of the judicial office which had been the object of his laudable ambition, have caused wide-spread sympathy in the Profession. The deceased Judge, who was a J.P. and D.L. for Monmouthshire, succeeded his father in the baronetcy in 1876. *Mar. 31.*

LAMB, Joseph John Talbot, of Lincoln's Inn, Esq., Barrister-at-Law, aged 23. Called 1880. B.A., London, 1878. *April 16.*

LEACH, Thomas, of Seaford Lodge, Ryde, and of the Middle Temple, Esq., Barrister-at-Law, aged 68. Called 1840. *Mar. 23.*

LYDEKKER, Gerard Wolfe, of the Lodge, Harpenden, Herts, and of the Inner Temple, Esq., Barrister-at-Law, aged 69. Called 1841. M.A., Trin. Coll., Camb., 1st class, Classical Tripos, 1833, formerly Examiner, I.T.; J.P. for Cos. Herts and Bedford, Deputy-Chairman Herts Quarter Sessions. *Feb. 12.*

MACDONNELL, Sir Richard Graves, K.C.M.G., C.B., formerly Chief Justice of Gambia, aged 66. Called by the King's Inns, 1838, and by Lincoln's Inn, 1840. Sir Richard, who was eldest surviving son of the Rev. Richard MacDonnell, D.D., Provost of Trin. Coll., Dublin, was educated at Trin. Coll., Dublin. B.A., 1835; M.A., 1838; LL.D. (Honorary) 1871. Chief Justice of Gambia from 1843 till 1847, when he was appointed Governor of the Colony; Governor of St. Lucia and of St. Vincent, 1852-55; South Australia, 1855-63; Nova Scotia, 1864-5; Hong-Kong, 1865-72; C.B., 1852; Kt. Bachelor, 1855; K.C.M.G. in 1871. *Feb. 5.*

MARSH, Matthew Henry, of Ramridge, Hants, and of the Inner Temple, Esq., Barrister-at-Law, aged —. Called 1836. Educated at Westminster and Ch. Ch., Oxford. M.A. J.P. for Hants and Wilts; D.L. for Wilts; M.P. (Liberal) for Salisbury, 1857-68. Formerly a member of the Legislative Council of New South Wales. *Jan. 26.*

MORICE, David Simpson, Esq., Solicitor, aged 63. Admitted 1843. *April 2.*

NEILL, Robert, Esq., Member of the Faculty of Procurators. Admitted 1843. *Mar. 18.*

NORTON, John Ralph Norton, Esq., late Solicitor, Monmouth, aged 87. Admitted 1817. *April 18.*

O'BRIEN, Donat John Hoste, of Aston and Butler's Green, Herts, and of the Inner Temple, Esq., Barrister-at-Law, aged 54. Educated at Eton and St. John's Coll., Camb. B.A. 1848. Called 1852. J.P. for Hertfordshire. *April 16.*

PACKWOOD, William, Esq., Solicitor, aged 35. Admitted 1867. Town Clerk, Hove. *Jan. 13.*

PAGAN, George H., Esq., a Solicitor, Sheriff Clerk of Fife-shire, aged 50. Admitted 1848. *April 11.*

POPE, Henry Montagu Randall, of Lincoln's Inn, Esq., Barrister-at-Law, aged 31. Mr. Pope died at sea, on his way out to Australia. *Jan.*

POWELL, Caleb, of Clonshavoy, Co. Limerick, and of the King's Inns, Esq., Barrister-at-Law, aged 87. Educated at Trin. Coll., Dublin. Called to the Irish Bar, 1817. M.P. (Lib.) for County Limerick, 1841-47. J.P. for Co. Limerick, and High Sheriff, 1858. *Feb. 28.*

PULLEN, John, Esq., Solicitor, aged 82. Admitted 1820, *April 1.*

ROBERTSON, Sir Daniel Brooke, K.C.M.G., C.B., of Lincoln's Inn, Barrister-at-Law, aged 71. Called 1840. From 1842 to 1879 an active and distinguished member of the Consular Service in China. *Mar. 27.*

RODGERS, Charles, Esq., Solicitor, Sleaford, Lincolnshire, aged 73. Admitted 1840. *April 5.*

ROOKE, Richard Ludlam, Esq., Solicitor, Leeds. Admitted 1845. *Mar. 20.*

ROSS, Robert, Esq., Solicitor, Glasgow, aged 52. Admitted 18 . *Mar. 5.*

SHIRESS, William, S.S.C. (Scot.), aged 77. Admitted 1828. Dean of the Society of Procurators and Solicitors for Forfarshire, since 1865. *Jan. 21.*

SMITH, William John Bernhard, of Eaton Place, and of the Middle Temple, Esq., Barrister-at-Law, aged 62. Educated at Oriel Coll., Oxford. Called 1842. A well-known archæologist and antiquary. *Feb. 27.*

SMOLLETT, Alexander, of Cameron House, Bonhill, Dumbar-tonshire, Esq., Advocate at the Scottish Bar, aged 79. Eldest son of the late Rear-Admiral John Rouet Smollett, of Bonhill, and a lineal descendant of the celebrated Tobias Smollett. Educated at the University of Edinburgh. Called to the Scot-

tish Bar, 1825. M.P. (Cons.) for Dumbartonshire, 1841-59. J.P. for Dumbartonshire and Convener of that county from 1847. *Feb. 25.*

SNODY, Andrew, S.S.C. (Scot.), aged 85. At the time of his death, the oldest Member of the Society. Admitted 1823. *Mar. 18.*

SOMERSET, Granville Robert Henry, of the Inner Temple, Esq., Q.C. and a Bencher, Recorder of Gloucester, aged 57. Called 1851. Son of the late Right Hon. Lord Granville Charles Henry Somerset, M.P., and cousin to the Duke of Beaufort. Educated at Westminster School, and at Ch. Ch., Oxon. B.A. 1845, and afterwards Fellow of All Souls and D.C.L. Called 1851. J.P. and D.L. for Monmouthshire, and Deputy-Chairman of Quarter Sessions. *Mar. 23.*

THOMPSON, Richard Newcomb, Esq., Solicitor, Stamford, aged 77. Admitted 1825. *Mar. 21.*

TURNER, Henry John, Esq., Solicitor, aged 73. Admitted 1829. *April 5.*

WALKER, Frederick, Esq., Solicitor, Southsea, aged 40. Admitted 1866. *Feb.*

WALKER, William, of Wilsick Hall, Doncaster, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 73. M.A. Trin. Coll., Camb. Called 1834. J.P. and D.L. for the West Riding of Yorkshire. *April 21.*

WEBBER, John Huish, Esq., Solicitor, aged 83. Admitted 1824. *Jan. 27.*

WEST, Henry, of the King's Inns, Esq., Q.C., late County Court Judge, and Chairman of Quarter Sessions, County Wexford, aged 73. Called 1833. B.A. Trin. Coll., Dub., 1831. *April 21.*

WILLCOCK, John William, Esq., Q.C., of the Inner Temple, aged 80. Called 1825. *April 5.*

WILLS, Theophilus Samuel, Esq., Solicitor, aged 35. Admitted 1878. Educated at Marlborough, and Clare Coll., Camb.; B.A. 1867. *Feb. 2.*

WINTERBOTHAM, John Brend, Esq., Solicitor, Cheltenham, aged 75. Uncle of the late Henry S. Page Winterbotham, of Lincoln's Inn, Esq., Barrister-at-Law, M.P. for Stroud, and Under-Secretary of State for the Home Department in the last Liberal Government. Admitted 1827. *Feb. 27.*

WOODROFFE, William, of the King's Inns, Esq., Barrister-at-Law, aged 64. Called 1838. *April 2.*

WRIGHT, James, Esq., formerly Registrar of the County Court, Middlesex, and subsequently of the Bloomsbury County Court, aged 83. *Jan.* 26.

- YORKE, Joseph Augustus, of the Inner Temple, Esq., Barrister-at-Law, aged 49. Called 1854. Only son of late Hon. and Very Rev. Grantham Yorke, D.D., Dean of Worcester, and nephew of the 4th Earl of Hardwicke. Practised for some time as a Special Pleader, and was subsequently appointed Stipendiary Magistrate for South Shields. *Feb.* 14.

Quarterly Notes.

The Peace which has happily taken the place of War in the Transvaal has been made very much on the lines suggested in our pages, but with one or two rather important differences. That a resident Diplomatic Agent should be accredited to the capital of the South African Republic is exactly in accordance with the view propounded by us. What we insisted upon, in fact, was that he ought to be distinctly a Diplomatic Agent, not simply a Consul. The gallant and learned member of the English Bar who was in command on the British side, and charged with powers to negotiate terms of peace, has, however, departed from the simplicity of our programme in at least two points, and therein, we fear, may unintentionally have been laying the seeds of future disturbance. These two points are (1) the title of the Diplomatic Agent, who, it is understood, is to be called "Resident;" (2) the introduction of the epithet "Suzerainty" to define the relation of Great Britain to the South African Republic.

On these two points, it appears to us that Sir Evelyn Wood was ill-advised, or advised himself less well than we could have wished. "Resident" is not the ordinary term for a Diplomatic representative, except in so far as it may be taken as an abbreviation for "Minister Resident." What it does bring forcibly to mind is a rather different functionary—the Indian "political"—a class of officers frequently, if not generally, of distinguished ability, no doubt, but certainly not strikingly remarkable, as a class, for that abstinence from all interference in the internal affairs of the State to which they are accredited, which is so severely and necessarily exacted from the Ambassador, the Envoy Extraordinary, the Minister Resident, or the *Chargé d'Affaires*. We shall be very glad if events prove that the ordinary Indian "Resident" is not reproduced in South Africa. But we think the choice of the title unfortunate.

As to the other title proposed to be added to the already somewhat numerous designations of the Defender of the Faith, and Empress of India, viz., that of "Suzerain" of the South African Republic, we think it an equally unfortunate choice. It has greatly exercised the minds of leader-writers, but then

they must have something to write about, so that is in itself a small matter. Our *gravamen* against the epithet is rather this: that it does not of itself express what it appears intended to connote; that the class of States to which it was applied in Europe has practically ceased to exist, after a considerable experience of the difficulties to which their anomalous position gave rise; that the Feudal Law, from which the term is derived, is dead beyond the possibility of resuscitation, and even were it not so, the term is inaccurately used if meant to express, as appears to be the case, that the foreign relations of the South African Republic are to be carried on through Great Britain. There is yet another objection, and curiously enough it is also an Indian one that occurs to us. We are strongly reminded by this term "Suzerainty" of the Indian doctrine of the "Paramount Power"—a vague and mysterious Something which stands in the background of our relations with the Native Feudatory Princes of India. Not a thing much talked of, or glibly brought forward in Cashmere or Nepaul, but rather associated with handsome silken banners and orders in Durbar, presented, amid much tom-tom and blare of trumpet, and display of semi-Orientalised Western pageantry. In the Middle Ages, and in the Mediæval Law, the term Suzerain implied a personal relation; it had certainly nothing to do with the question of autonomy, and as certainly it did not connote that the Suzerain was the medium through which the foreign relations of the vassal were carried on. But this seems to be accounted the leading idea of the term in South Africa, and in the nineteenth century.

Not long ago, we had a Semi-Sovereign State under our protection—the Republic of the Seven Ionian Islands, in which our present Premier exercised the office of Lord High Commissioner, by appointment of the British Crown. There are several reasons, it seems to us, why this precedent might well have been followed in South Africa. The capital reason is that both the States in question followed the Republican form of Government. The next reason is that the use of such a terminology as that the South African Republic was placed under the "Protectorate" of Great Britain, would have followed precedent, and at the same time have avoided the particular difficulties which we have pointed out as inherent in the use of the terms "Suzerain" and "Suzerainty." These terms are not, indeed, as a former distinguished occupant of the Woolsack

(Earl Cairns) appears to have supposed, invented for the nonce; but they are none the less, in our view, unfortunate. It is surely not too late to substitute what would appear to be unobjectionable terms, having a precedent both in British practice, and in International Law. Whether the position of a Semi-Sovereign State is one which it is desirable to create, at a day when the class, never large, is almost extinct, is a different question. The Bey of Tunis is, *eo nomine*, under the "Suzerainty" of the Sublime Porte. It remains to be seen what that Suzerainty is worth to him. The Republic of Andorra has for its "Co-Sovereigns," the Bishop of Urgel and the French Republic. There are believed to be difficulties attending upon the relations of this ancient State with its two powerful neighbours. There remain, besides these, the Principality of Monaco, and the Republic of San Marino, both like Andorra, very ancient members of the European Commonwealth. It is hard to believe that any other destiny awaits them all than the destiny which has befallen the Republic of Cracow.

* * *

Considerable doubt having been expressed regarding the nature and extent of the legal training which the late Earl of Beaconsfield had gone through in early life, it may not be uninteresting to place on record the actual facts forming part of that remarkable career of one whose loss, though at a ripe old age, all classes unite in regretting.

Setting out with the idea of becoming an "Attorney of the Court of King's Bench, and a Solicitor in the Court of Chancery," Benjamin D'Israeli, son of Isaac D'Israeli, Esq., of Bloomsbury Square, was indentured apprentice on the 10th November, 1821, for five years, to William Stevens, Solicitor, of Frederick Place, Old Jewry (of Swain, Stevens and Co.), as is mentioned by a correspondent of our contemporary, the *Law Times*. Three years after this, his aspirations would seem to have turned towards a different career, and on the 18th November, 1824, "Benjamin Disraeli, of Bloomsbury Square, in the County of Middlesex, aged 20 years [his real age was somewhat less, the Synagogue records proving his birth on 21st December, 1804], eldest son of Isaac Disraeli of the same place, Esq.," was admitted a student of Lincoln's Inn, his sureties being his father, and his uncle, Nathaniel Basevi, Esq.

The new member kept nine terms, and according to the practice of the day, performed exercises. He remained a

member for seven years, but in 1831, on his own petition, alleging ill-health incapacitating him from following the profession of the Law, his name was removed from the Books. It will be apparent, from what we have stated, that the younger Disraeli's legal training was by no means inconsiderable. It is not a little curious that Lord Beaconsfield's great political rival, and successor in the Premiership, should himself have gone through a very similar training, with the exception of the portion in the office of a Solicitor.

Fourteen months after Benjamin Disraeli had ceased to be a Fellow of Lincoln's Inn, on the 25th January, 1833, William Ewart Gladstone, having just completed his brilliant career at Oxford, at the age of 23 years, was admitted to the same learned Society. Mr. Gladstone, after keeping eleven terms, between 1833 and 1837, and when he had been a member for six years and three months, likewise petitioned to have his name removed, but on the ground of his "having given up his intention of being called to the Bar." It may not be uninteresting to state that Mr. Gladstone, as might be expected, was no mere diner in Hall. He performed no less than six exercises, all between the 19th April and 31st May, 1837. We now print, by the ready courtesy of the Treasurer and the steward of Lincoln's Inn, the official extracts from the *Liber Niger* of the Society, as "*pièces justificatives*," which have not hitherto seen the light.

"BENJAMIN DISRAELI, of Bloomsbury Square, in the County of Middlesex, aged 20 years, eldest son of Isaac Disraeli, of the same place, Esquire.

"Admitted L.I. 18th November, 1824.

"Sureties in Admission Bond: Isaac Disraeli and Nathaniel Basevi, Esquires.

"Dined in Hall in the following Terms:—Michaelmas, 1824; Hilary, 1825; Easter, Trinity, and Michaelmas, 1827; Hilary, Easter, Trinity, and Michaelmas, 1828.

"Performed Exercises: May 23rd and May 26th, 1827.

"At a Council held the 25th November, 1831. Upon the Petition of BENJAMIN DISRAELI, a Fellow of this Society, praying that his name may be taken off the books, his health not permitting him to follow the profession of Law: It is Ordered accordingly."

"WILLIAM EWART GLADSTONE, of Christ Church, Oxford, B.A., aged 23 years, fourth son of John Gladstone, Esquire, of Fasque, in the County of Kincardine.

"Admitted L.I. 25 January, 1833.

"Surety in Admission Bond: Christopher Edward Puller, Esquire.

"Dined in Hall in the following Terms:—Hilary, Easter, and Trinity, 1833; Easter and Trinity, 1834; Easter and Trinity, 1835; Easter and Trinity, 1836; Easter and Trinity, 1837.

"Performed Exercises: 19th April, 1837; 27th April, 1837; 28th April, 1837; 29th, 30th, and 31st May, 1837.

"At a Council held 15th April, 1839. Upon the Petition of WILLIAM EWART GLADSTONE, a Fellow of this Society, praying that his name may be taken off the books, having given up his intention of being called to the Bar: It is Ordered accordingly."

* * *

The Indian Government, still acted upon, it would appear, by the impulse of activity communicated by Macaulay, and freshened by Sir James Stephen, sends us a conspicuous monument of its legislative zeal in the shape of a large volume, being the *Report of the Indian Law Commission*, 1879, embracing Bills dealing with the following subjects, several of which are of far-reaching import:—Negotiable Instruments, Transfer of Property, Alluvion, Master and Servants, Easements, and Trusts. The Commissioners (Hon. Whitley Stokes, C.S.I., member of the Council of the Viceroy; Hon. Charles Turner, C.I.E., then Puisne Judge, High Court, N.W.P., now Sir Charles, and Chief Justice of Madras; and Hon. Raymond West, M.A., a Puisne Judge of the High Court, Bombay), appear to have been fully alive alike to the importance of codification, and to its special difficulties in a country such as India. "In its larger sense," therefore, as they remark, "of a general assemblage of all the laws of a community no attempt has as yet been made in this country [*i.e.*, India] to satisfy the conception of a code." And in this widest sense of the word, they are probably right in thinking that "the time for its realisation has not arrived." Still they distinctly state their conviction that the "ultimate design of forming into a general code," the distinct Acts dealing with the several branches of the law, "ought never to be lost sight of." The truth is that only those who know something of the diversities of Indian Races, Laws and Religions, can have the faintest idea of the special difficulties attending upon codification in India. And the very action of European society and modes of thought upon native Indian society and modes of thought, is, as the Commissioners justly remark, not one of the least of these difficulties.

We should like to know something of the line taken up on their return home, by those Indian students who come over to

this country to obtain the *status* of barrister-at-law. We fear that they do not necessarily imbibe much of the scientific juridical spirit during their attendance at the Inns of Court, while much of what they have to learn must be to them perplexing knowledge which they can scarcely know how to dispose of when acquired. This applies most particularly to Real Property Law. A Hindoo or Mohammedan coming straight from a Presidency College or University to sit at the feet of Mr. Joshua Williams, Q.C., must feel somewhat as though in a dream, the true interpretation whereof he sees no means of discerning. It is a pity, we think, that the home authorities do not devise some special courses for Indian students, which should give them the chance of laying in a store of Legal Principles upon which they might draw in after life, and which might enable them to become practical helpers in the work of Indian Codification.

* * *

An Australian Inter-Colonial Conference has lately had under its consideration the desirableness of constituting a Court of Appeal in and for the Australian Colonies. This proposal is subjected to a somewhat severe criticism by the *Australian and New Zealand Gazette*. Two points are specially raised: 1, the competence of the Conference, and 2, the value of the Court, if established. These are points upon which more information than is at present before us would be desirable. It is obvious, of course, that a Court of Appeal which had not adequate power would be quite as useless as a Court which had not confidence. The *Australian and New Zealand Gazette* doubts whether the Appeal to the proposed Court can be deemed final. It is permissible to doubt whether constitutionally it could be final, in the present relation of the colonies to the mother country. But the question is an interesting one to have had mooted, and however it may be decided, is one which, as the *Gazette* justly observes, can scarcely be unimportant in the great work of Australasian progress. We shall hope to hear more of it, and shall be glad if Dr. Hearn, the learned author of the "Aryan Household," applies himself to the *pros* and *cons* of an Australian Court of Appeal.

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Since our attention was first drawn to this subject we have received copies of the *Australian Law Times* (Melbourne, C. F.

Maxwell) for February 19th, and March 5th, in which occur some remarks of interest on points not already noticed by us. We observe that the Sydney Conference, on the 19th of January, passed a resolution that it was "desirable that there should be complete reciprocity between the several Australian Colonies and New Zealand as to the admission of Members to the Bar in such colonies." To this, however, our Melbourne contemporary demurs, that whereas in Victoria, New South Wales, and Queensland, the legal profession is divided as in England, in the other Colonies which took part in the Conference this division does not exist. Therefore while sympathizing with the aim of the resolution, our contemporary considers that its adoption would be unfair to those Eastern Colonies which have retained the usage of the Mother Country. Instead of the conference proposal, the *Australian Law Times* would establish reciprocity between the two branches in Victoria, New South Wales and Queensland, and "promulgate such arrangements as might be found equitable for the admission of practitioners from the other colonies." This last suggestion reads somewhat vaguely, but we shall probably find it more fully worked out in a future number. The question is far from being devoid of interest at home, whether in its bearing on the relations of the two branches in this country, or on the prospects of those Members of the English Bar who from time to time leave home for Colonial practice.

* * *

The Bill on Copyright which was introduced by Lord John Manners, Viscount Sandon, and Sir John Holker, then Attorney-General, has been placed in the hands of Mr. G. W. Hastings, M.P., and is shortly to be brought into the House. If the state of public business admits, it may have been introduced before these pages see the light. The Bill has undergone some serious modifications under its new auspices. It now bears the names of Viscount Sandon, Mr. Hanbury Tracy, and Sir Gabriel Goldney, besides that of Mr. Hastings. The noble Viscount, whose name was on the original Bill, must have been converted on at least one very important point, viz., the duration of Copyright, if he goes heartily with the new Bill. To the proposed substitution of a fixed period from (compulsory) registration for the author's life and thirty years of the original Bill, we ourselves are not converted. The arguments

on both sides have been already discussed in this *Review*, especially in connection with the Report of the Royal Commission (*Law Magazine and Review*, No. CCXXXVIII., November, 1879). We are aware that the Dutch Chambers have a Bill under consideration, which takes the same line as that of Mr. Hastings's Bill, but we cannot think for a moment that the mass of European Legislatures have knowingly adopted an unpractical system in protecting the author for his life and a fixed period after his death. If the date of the author's death can be ascertained in France, in Spain, in Russia, in Germany, in Belgium, and in Portugal, it can surely be ascertained also in England.

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Reviews of New Books.

A Treatise on Private International Law, with principal reference to its practice in England, by JOHN WESTLAKE, Q.C., Hon. LL.D., Edinburgh, late Fellow of Trinity College, Cambridge. (W. Maxwell & Son. 1880.)

A Treatise on the Conflict of Laws, by Friedrich Carl von Savigny. Translated, with Notes and Appendix, by WILLIAM GUTHRIE, Advocate. Edinburgh: T. & T. Clark; London: Stevens & Sons. (2nd edition, revised.) 1880.

International Law, by WILLIAM EDWARD HALL, M.A., Barrister-at-Law. (Oxford. Clarendon Press. 1880.)

Commentaire sur les Eléments du Droit International, de HENRI WHEATON, par WILLIAM BEACH LAWRENCE. Tome IV. (Leipzig: Brockhaus; London: Trübner. 1880.)

The Law of Extradition, by A. J. SPEARS, D.D. (Boston: Little, Brown & Co. 1880.)

Tratado de Derecho Internacional, por AMANCIO ALCORTA. (Buenos Ayres: M. Biedma. 1878.)

Tratado de Derecho Internacional Publico, por PASCUAL FIORE, vertido en Castellano por GARCIA DE MORENO. Tomo I. (Madrid: Gongora y Cia. 1880.)

The list of works, both of doctrine and practice, which we place at the head of this notice, we place there, not because we can possibly hope to deal with more than two or three of the number in our present issue, but because we think it well to show the attention which International Law is more and more attracting to itself in all parts of the civilised world. The majority of the list contains the names of writers already well known, and acknowledged masters of their subject. Not the least distinguished of the authors now before us, are writers who have contributed to our own pages. Portions of the historical matter embodied by Mr. Westlake in his present volume, which takes the place of his standard work, first published in 1856, appeared in the *Law Magazine and Review*; and Mr. Guthrie, condensed from Rudcrff's Memoir, a notice for this Review of the life and works of Von Savigny. Mr. Beach Lawrence, whose loss we have had to regret since this notice was in type, was also an

old contributor and a constant friend to this Review, to which he had lately sent the last volume of his latest published work.

Mr. W. E. Hall, though he had as yet published little, had already shown himself an original thinker in the domain of the Law of Nations, when in 1874 he brought out his essay on the *Rights and Duties of Neutrals*, reprinted in the relative portion of his present Treatise.

Mr. Westlake's name has so long been closely identified with the subject of his present volume, that it would have been matter for surprise had he longer delayed its issue. Intended to be "in lieu of a second edition of the work published in 1858," it is substantially a new book. We should have been glad if the learned author had seen fit to write more of a Treatise, such as would have come with so much authority from his pen, rather than draw up, as he has practically done, a Digest of English Case-law on questions which come within the field of Private International Law. For there is much in the present aspect of that branch of the modern *Jus inter Gentes*, which is in a fluid condition, and on which the opinion of *prudentes*, so to speak, might with advantage be given. It is indeed hardly possible to look abroad, whether beyond the Atlantic, or only beyond the Channel, and not recognise the truth of the observation made some years ago by M. Charles Brocher, of Geneva, in the late *Revue de Législation Ancienne et Moderne* (Paris, 1875, p. 557, *seq.*), to the effect that in this our day, Private International Law is certainly passing through one of the most important phases of its development. Many causes conspire to produce this transition period, and its close does not seem to us by any means near. One of these causes, we ourselves cannot doubt, is the conflict between rival systems of Law, and the shock which—whatever may ultimately prove the prevalent doctrine—Von Savigny's system has suffered at the hands of the new and subversive School of Ihering. The opposition between the two is deeper, we are persuaded, and the blow to the hitherto unquestioned supremacy of Savigny is severer, than Mr. Guthrie seems to realise. It means, perhaps, nothing less than reconstruction of the entire edifice, a truly serious task, which were enough to tax generations of jurists. The division itself of International Law into Public and Private, though on the surface convenient, and following as nearly as possible the analogy of the Roman *Jus Publicum* and *Jus Privatum*, is yet, it seems to us, often difficult to draw, and not

unfrequently, when drawn, purely artificial. It depends a good deal upon the point of view from which a particular question is approached, whether it be one of Public or Private Law. Many cases of private interest might yet truly have it said of them "*Ad statum Reipublicæ spectant.*" Take, e.g., the U.S. "Trade Mark cases" (U.S. Reports, 100). They were, in themselves, cases of private interest, but they were not decided without involving very grave questions of Public Law, including the powers of the President under the Constitution of the United States, and the consequent validity or invalidity of Treaties between the Federal Government and Foreign Powers. We think, therefore, that text-writers who make Private International Law their principal subject, should, nevertheless, always bear in mind this unavoidably close connection between the two branches. Mr. Westlake has given to his new work the character of a Digest of the Law on questions of Private International Law decided in the English Courts, rather than that of a Treatise on the Principles of that branch of Law. He has, as a rule, adhered to brevity so closely that his text could not possibly have been more compressed without ceasing to be intelligible. We should often have been better satisfied had the text been fuller, and we could have dispensed with the names of the Judges, which are appended to their decisions, an innovation that does not entirely command our sympathy. But whether Mr. Westlake is collecting judicial decisions, or commenting upon them, and speaking his own mind, he is sure to be listened to with interest on all questions connected with the Conflict of Laws.

Mr. Guthrie's book is of value alike from the eminence of the profound Jurist, Savigny, whose teaching he sets before us, and from the interesting commentary which he appends throughout by way of notes. By this means the book is brought down to the present day, and the principles of Savigny can be studied in their agreement with or divergence from modern judgments or *dicta*. In the same way reference is made throughout both to the more recent editions of Continental writers cited by Savigny, and to English, Scottish and American cases, or text-books illustrating the subject. Thus we meet with *Le Sueur v. Le Sueur*, *Sottomayor v. De Barros*, *Simonin v. Maillac*, and other well-known "modern instances," and we are referred to appropriate passages in the works of Lord Fraser, who now so fitly adorns the Bench of the Court of Session, Mr. Westlake,

Mr. Dicey, Mr. Foote, &c. Sometimes we should have been glad if Mr. Guthrie had given us a little insight into his own attitude towards his great master's teaching. For instance, it would seem at pp. 95-6, that there must have been some difference between Savigny's view of the constitution of Caracalla, extending Roman citizenship throughout the limits of the Roman world, and the view taken by Sir Henry Sumner Maine. Savigny certainly seems to make rather light of the edict, while Sir Henry unquestionably attributes to it a great and far-reaching influence. Is this divergence apparent rather than real, and does it arise from the special point of view from which each writer was regarding this constitution? Or does it indicate a real divergence, into the causes and importance of which it would be interesting to make a closer investigation? Perhaps, in a future edition, Mr. Guthrie will turn his attention to some of the at least apparent antinomies of these and other masters of modern Juridical Thought.

Mr. W. E. Hall is a new candidate for public favour as a text-writer on International Law, though already known by several *pièces de circonstance* which showed him to be working out for himself solutions of questions of importance in international relations. Mr. Hall has read widely and thought deeply on these questions, and the result is before us in a volume which ought to be read and considered by all who take an intelligent and scientific interest in the Law of Nations. It is not the least of Mr. Hall's merits that he criticises freely both doctrines and their upholders. We do not by any means always agree with his criticisms, but they give a freshness and a point to his book which entitle it still more to our attention. Sometimes Mr. Hall introduces a new, or, at least, unfamiliar terminology. Thus, where most writers speak of "territorial waters," he speaks of "marginal seas." There are objections to the former epithet not shared by the latter, which purely states a fact. But bearing in mind the questions connected with this particular epithet, we think the form introduced by Sir Travers Twiss in our own pages, "jurisdictional waters," is better than either. And in his criticism of the various doctrines on this point, Mr. Hall does not note the employment of this phrase by Sir Travers, subsequent as it is to the latest edition of his *Law of Nations*. We may remark, *obiter*, that we fail to apprehend the exact meaning of Mr. Hall when he says in his critical note, p. 126, that the rights of sovereignty or jurisdiction belonging

to a State, are, in all cases (except piracy), "indissolubly connected with the possession of international property." The general stand-point of Mr. Hall may best be judged by his opening statement, that he regards the rules of International Law "simply as a reflection of the moral development and the external life of the particular nations which are governed by them." In his Appendices there will be found an interesting summary of the author's view of the Formation of the Conception of International Law, and also a useful *précis* of the enactments of the chief States which have legislated on the still complicated question of Nationality, besides other documents of practical utility for reference.

WE shall hope to continue in our next issue the consideration of some of the many important topics covered by the works named at the head of this review.

Principles of the Criminal Law. By SEYMOUR F. HARRIS, B.C.L., M.A. Second Edition. Revised by the Author and F. P. TOMLINSON, M.A., of the Inner Temple, Barrister-at-Law. Stevens and Haynes. 1881.

Mr. Seymour Harris, already well-known for his several useful institutional treatises, has seized an opportune moment for the issue of a revised edition of his *Criminal Law*. The new legislation in regard to Summary Jurisdiction occupies a separate Book of the present edition, in which various minor alterations have also been made, tending to the greater convenience of the student. The annotations embrace terse statements of law or opinion from the works of Sir James Stephen, and of the distinguished American Criminalist, Mr. Bishop. But we do not observe that Dr. Wharton, a leading text-writer on this subject in the United States, has been consulted as we should have expected. The Table of Offences and Punishments has been already remarked upon both by ourselves and by foreign critics as a feature adding to the value of the book. Such a Table, if extended by Mr. Seymour Harris to the relative punishments of Continental States, would be an interesting study in comparative legislation in a future edition. Perhaps, by that time, the Criminal Code Bill may have become law. It sleeps just now, but it must awake ere long.

The Law of Railway Companies. By J. H. BALFOUR BROWNE, of the Middle Temple, Esq., Barrister-at-Law, Registrar to the Railway Commissioners; and H. S. THEOBALD, of the Inner Temple, Esq., Barrister-at-Law, Fellow of Wadham College, Oxford. Stevens & Sons. 1881.

There are two ways of compiling such a work as that which Messrs. Browne and Theobald have given to the public—the chronological and the topical. That the system of grouping the Acts according to their subject-matter is the right one we think few will be found to deny. The authors themselves admit the disadvantages of the chronological method, but while abstaining from pointing out any virtues which may attach to it, have yet thought it “best, on the whole,” to adopt it. This regrettable decision has had the effect, in our opinion, of materially detracting from the usefulness of the book. Until, however, a work of equal merit with this one, but arranged on the better system, shall have appeared, there can be no doubt that the book under review offers to the practitioner an almost indispensable aid in all cases of Railway Law and its kindred topics. No less than 75 Acts, from the Carriers Act (1 William IV., c. 68) down to the Employers Liability Act, passed on the 7th September, 1880, are set forth in chronological order. Between the sections are intercalated notes—often lengthy, though concisely worded—setting forth the effect of all the decided cases to November, 1880. The labour of compilation and digestion must in this part have been very considerable, and so far as we have been able to test it, appears to have been conscientiously and accurately performed. In addition to the Acts and Notes of Cases, the volume also contains much useful ancillary information, such as a list of the documents required to be sent to the Board of Trade previously to the opening of a railway; the Orders under the Railway Companies Act, 1867; the General Orders made by the Railway Commissioners under the Act of 1873; the Orders in Council under the Explosives Act, 1875, so far as they affect Railway Companies, and the bye-laws under that Act approved by the Board of Trade. In an appendix are the material portions of the Standing Orders of the House of Commons 1878-9, and the bye-laws approved by the Board of Trade for regulating the conveyance of passengers upon railways. The index, for which Mr. Montague Lush is responsible, is full and well executed; and facility of reference is aided by a complete marginal analysis. Credit

is due to the publishers and printers for the manner in which their share in the work has been executed; and we note with approbation that the edges are *cut*, a practice which, as respects books for business men at least, we trust will soon become universal. The loss of time involved in cutting open with a paper-knife the pages of a bulky treatise ought never to be inflicted by publishers upon their customers.

A Digest of the Law of Partnership. By FREDERICK POLLOCK, M.A., Hon. LL.D., Edinburgh, of Lincoln's Inn, Esq., Barrister-at-Law. (Second Edition, with Appendix and the Partnership Bill, 1880, as amended in Committee.) Stevens and Sons. 1880.

In this very seasonable re-issue of his able and scholarly work, Mr. Pollock (whose merits, we are glad to see, have won him fresh Academic honours) has re-modelled some of his text, and has added a very practical Commentary in the shape of the Partnership Bill, 1880, originally drafted by himself. Mr. Pollock's employment of Sir James Stephen's system of expounding the law in short propositions, divested as far as possible of technicalities, and supported by illustrations from decided cases, is too well known by this time to need more than incidental mention. His present subject is one which specially needed the care he has given it, and the revised edition of his Digest will, besides being very acceptable to all who are in any way concerned in the vast net-work of interests covered by the word Partnership, also, we hope, hasten the progress of legislation. It seems to us, as far as we can judge, that the proposals of the Bill of 1880 with regard to the registration of Limited Partnerships (clause 79, p. 148), which, as we understand, did not meet with the approbation of the Board of Trade, bear a considerable resemblance to two similar proposals which have engaged the attention of several successive Ministries in Italy.

Coote's Law of Mortgage. Fourth edition. By W. WYLLYS MACKESON, Esq., of the Inner Temple, one of Her Majesty's Counsel. Stevens & Sons. 1880.

Coote's Law of Mortgage, which, despite its somewhat excessive verbosity, obtained a considerable reputation, had, during the thirty years now past since the issue of its third

edition, fallen very much behindhand in its exposition of current law. Not only did it suffer from the ordinary defects of an old edition—the absence of all reference to the more recent cases—but the branch of the law of which it treats had also been subjected to statutory emendations and reforms of a most extensive character. Changes in the law relating to Judgments, Registration, Bills of Sale, Bankrupts and Married Women, have all been carried out within that period, and it has also witnessed the Acts with which the names of Locke-King, Lord St. Leonard's and Lord Cranworth, are especially associated; as well as the considerable modification in the law as to the Administration of Assets which has taken place. The task, therefore, which Mr. Mackeson found before him, was not so much that of an editor as of an author, and he has produced a book which, while nominally a new edition of "Coote" is practically a new work from the pen of Mr. Mackeson. The author, as we shall prefer to call him, has evidently not been sparing of labour or care in carrying out his design. The old arrangement of the chapters has been retained, but the varied and extensive subject-matter has received a more logical treatment than formerly. We still think that greater compression would have been possible and desirable; but there can be no doubt that the work is most comprehensive in its scope and exhaustive in its treatment, and that it affords to the practitioner a mine of valuable and trustworthy information conveniently arranged and clearly expressed. The short summaries of the results of cases and statutes interspersed at the end of many of the chapters constitute a valuable feature of the work. The table of cases alone covers 89 pages closely printed in double columns. The contents and index are very full and satisfactory.

Foreign Judgments. Part II. The effect of an English Judgment Abroad. By FRANCIS TAYLOR PIGGOTT, M.A., LL.M., of the Middle Temple, Esq., Barrister-at-Law. Stevens & Sons. 1881.

We are glad to be able to draw the attention of our readers to Mr. Piggott's continuation of his important book, of which we noticed the first instalment in the *Law Magazine and Review* for November, 1879. Having devoted a substantive article to the question—*Law Magazine and Review* for August, 1879, as well as one by Mr. Pigott himself in our number for November, 1880,

we need say but little here in proof of the value which we attach to the thorough discussion of this widely interesting subject. Mr. Piggott, in his present volume, brings together a mass of details which it would be difficult to find elsewhere in our legal literature stated in so concise and accurate a form. From the United Kingdom the author soon passes to its Colonies, and here we see he has duly noted the progress of international legislation, tending to the simplification, if not unification, of practice, pending the arrival of the day to which he looks forward, when "one Imperial Statute shall bind together all the many Courts acknowledging the appellate supremacy of the Privy Council and the House of Lords." The discussion of Colonial Law leads to the citation of some interesting and, as it seems to us, rather remarkable judicial decisions. Thus, in *Evanturel v. Evanturel* (L.R. 6 P.C. 1), it was held that the Roman Law in force in the province of Lower Canada was that of the Theodosian Code, which, therefore, with the law of the Antonines, "ought to prevail over that of Justinian in countries governed by the Code of Paris" (*cf.*, *Symes v. Cuivillier*, L.R. 5 App. Ca. 138). But what is this "Code of Paris?" Is it not the "Droit Coutumier," as embodied in the decisions of the Parliament of Paris? Is it then really a Code at all? And did the Privy Council mean to assert that Justinian's reform of the law was never accepted in the western division of the Empire, or, at the least, that Gaul was always an exception to the general rule? Yet the school of Angers taught that law in the tenth century, *teste* M. Caillemer. We should have been glad if Mr. Piggott had annotated these judgments, and given us his opinion upon them. As a matter of philology, we may remark that we do not understand why he writes "Coutûne," unless it be a following of Privy Council orthography, and not of that of the French language. Nor do we see on what grounds he translates "Faroe" as "Horse Isle." The etymology and meaning of this name were both discussed, as far back as 1862, in *Notes and Queries*, Third Series, II., 23, (*s. v.* Færoe: Fairfield,) where will be found an extract from a letter of Professor Stephens, of Copenhagen, which certainly appears clearly to establish that "Færoe" means "Sheep Islands" and so we had always ourselves understood it. These points, however, lie somewhat outside the direct province of Mr. Piggott's book, and do not interfere with its general value as a work of reference of great and increasing utility.

Statute Law: the Principles which Govern the Construction and Operation of Statutes. By EDWARD WILBERFORCE, of the Inner Temple, Barrister-at-Law. Stevens & Sons. 1881.

What is "Statute Law?" The answer may seem easy; but, in fact, it is not so. We are accustomed to oppose *lex scripta*, or Statute Law, to *lex non-scripta*, or Common Law, regarding the former as written and certain, the latter as so far uncertain, in that it resides solely in *gremio judicum*. Yet Lord Bacon, long ago, pointed out that "more doubts rise upon our Statutes, which are a text law, than upon the Common Law, which is no text law." This uncertainty of Statute Law is due to various causes:—to the imperfection of all language, the special defects of the language and style of the Statutes themselves—defects which have now been considerably abated within the last few years, but which are still not wholly removed—but, above all, to the action of the Legislature itself, by which the best-drafted Bill is often so mutilated by hasty and ill-considered amendments as to render it inconsistent alike with itself and with the law which it professedly leaves untouched. Statute Law has, therefore, to be evolved from the statutes themselves by the Judges; and the Judge-made rules on the construction of statutes form consequently an important element in the formation of "Statute Law." In accordance with this view, Mr. Wilberforce proposes to define it, as we think accurately, as "the will of the nation, expressed by the Legislature, expounded by Courts of Justice."

Notwithstanding the time-honoured work of the late Sir Fortunatus Dwaris and the more recent treatise of Sir Peter Benson Maxwell on the Construction of Statute Law, which might seem to have fully occupied the field, we think there was room for a book such as this which Mr. Wilberforce has written. The idea of writing it was suggested to the author, he tells us, by the difficulty which he experienced in the course of practice, when some years ago he had occasion to search for cases bearing upon the subject. His object has been not merely to accumulate cases decided upon the words of particular statutes, but to "arrange in a logical order the leading principles by which Statute Law is governed, and to illustrate them, as far as possible, by a consistent chain of authorities." The work is divided into seven chapters, treating respectively of 1. Statutes and Statute Law. 2. The Authority of Statutes. 3. The Construction of Statutes. 4. Their Operation. 5. The Various Kinds of Statutes. 6. The Several parts of a Statute; and 7.

The Repeal of Statutes. The subject matter of each chapter is methodically and clearly treated, and the author's statements of the law are lucid and terse. The *ipsissima verba* of decided cases are frequently incorporated in the text, and every assertion is supported by authority. We can recommend the book to the practitioner as a convenient and trustworthy guide.

Steer's Parish Law. Fourth Edition. By WALTER HENRY MACNAMARA, of the Inner Temple, Esq., Barrister-at-Law. Stevens and Sons. 1881.

The Parish is an ancient English unit, historically speaking, alike in Civil and Ecclesiastical Law. Like many other words famous in history, it has gone through not a few vicissitudes. At times it has to be read as the equivalent of the modern Diocese; at times it has to be read in a sense wholly foreign to its ecclesiastical origin. A book on Parish Law might take up this "little republic" at its cradle, and trace it down the stream of English civil and ecclesiastical history. Such was not the plan adopted by Mr. Steer, nor has the present editor attempted so fundamental a change. A new edition was imperatively called for by the legislation of late years. It may be questioned whether a more entire re-casting would not have been the wiser course. As it is, much of the preliminary titles of the various sections consists of a conservative repetition of exploded antiquarian and philological, or rather pre-philological crotchets—quaint, no doubt, but scarcely useful. This is the more to be regretted as the work is a valuable one, and the subject remains important under whatever alterations of law and procedure. The chapter on Marriage might well be remodelled. A book of so wide and varied a bearing upon the concerns of everyday life will, we feel sure, repay the editor for making it Macnamara's Parish Law, based upon Steer.

Bankruptcy Law and Practice. By H. WYATT HART, of the Inner Temple, Esq., Barrister-at-Law. Waterlow Bros., and Layton. 1880.

On the eve of the introduction of a Bill which must materially alter existing legislation on the subject, it might seem wasted labour to produce a work on Bankruptcy Law. But the difficulties which have hitherto obstructed the passage of such a measure, and the fact that any new law must incorporate

a considerable portion of the old, combine to give a *raison d'être* to Mr. Wyatt Hart's book. It is not a treatise, or a text-book on the subject, but for the most part an annotated edition of the Act of 1869 (32 & 33 Vict., c. 71;) and is suited rather to the practitioner than the student. The framework, roughly speaking, consists of two parts; the first includes the Act of 1869, with its sections noted and interpreted by judicial decisions; the general rules made in pursuance of the Act; and a schedule of forms; the second, an appendix, embraces certain statutes and rules dealing with cognate subjects, such as the Act for the abolition of imprisonment for debt (32 & 33 Vict., c. 62), &c., besides a useful list of those County Courts which have and those which have not Bankruptcy jurisdiction. This is a good arrangement in accordance with the scope of the work, for while the principal statute is discussed by itself, a ready and easy reference is provided to such matters as are of almost equal importance, and are daily discussed in courts having bankruptcy jurisdiction. Whether or not Mr. Wyatt Hart has chosen the best method for his exposition of the law is a different question. However that may be, he has shown an intimate knowledge of the case-law of his subject, and has honestly and with considerable success faced the difficulties occasioned by the obscure wording of some of the sections, and the conflicting interpretations put upon them. The more important sections, such as secs. 6, 15, 23, 31, 40, 125 and 126, are carefully noted and discussed; and his illustrative propositions are generally accurate. A systematic ordering of the cases under each particular head, and some underlying principle deducible from each set of similar decisions would have rendered this work still more useful; but the former requirement is, in a great measure, met by a very ample and accurate index. Care and industry are conspicuous throughout this book, to which members of both branches of the profession may safely have recourse, as furnishing in a clear and concise form all leading and recent expositions of this complicated subject. We think that the publishers would have done better had they produced the book in a more pleasing form as to shape and style of binding; it is too long to be handy; in the portions containing the forms there are several almost blank pages, which if properly utilised, would have prevented an unnecessary increase of size. This defect might easily be remedied in a future edition.

The Bankruptcy Act, 1869, and the Decisions Thereon. By F. PITT-TAYLOR, of Lincoln's Inn, Esq., Barrister-at-Law. Second Edition. W. Maxwell and Son. 1880.

The publication of a second edition of Mr. Pitt-Taylor's useful and comprehensive manual of *The Bankruptcy Act, 1869*, seems to argue a general want of confidence in the probability of the fulfilment of the promise, year by year repeated, of fresh legislation, in amelioration of the acknowledged evils of the existing system. Mr. Pitt-Taylor sees and acknowledges these evils, but it was no part of his present work to offer suggestions for their remedy. Now, however, that the President of the Board of Trade has taken action, and marked out secs. 125 and 126 of the Act of 1869 as among the principal blots to be hit, it would be a good moment for suggestions from so practical a hand as that of Mr. Pitt-Taylor.

The Justices' Note-Book. By W. KNOX WIGRAM, of Lincoln's Inn, Barrister-at-Law, J.P. for Middlesex. Second Edition. Stevens and Sons. 1881.

The favourable reception generally accorded to this useful compendium of the law administered by the "Great Unpaid" has speedily led to a demand for a Second Edition. The Author has carefully revised and corrected the present issue down to December, 1880, and has supplemented the facility of reference previously afforded in the alphabetical arrangement, by the addition of a comprehensive Index. The features which have rendered this book more especially attractive to laymen, whose requirements Mr. Wigram had specially in view, are fully maintained, and will doubtless render it permanently popular.

Transactions of the Social Science Association. Manchester Meeting, 1879. Edinburgh Meeting, 1880. Longmans. 1880 and 1881.

Exceptional circumstances delayed the issue of the Manchester volume. Its Edinburgh successor is now also before the public, and we desire to call attention to both, as containing much directly connected and illustrative matter. With the addresses of Sir Travers Twiss and the Lord Advocate, our readers are already familiar. Copyright, Trade-marks, Bankruptcy, Marriage Laws, and other questions of the day in Law and Diplomacy have their share in both volumes, under some one or

other of the protean forms under which they are apt to come up for discussion. The Edinburgh volume contains Mr. Westlake's suggestive Paper on "Domicile or Political Nationality," and some very good papers and Discussions on Prison Reform and Police Reform, and the position of Discharged Prisoners. Sir Walter Crofton rightly alluded to the interest which the Italian Government takes in these and kindred questions. We should have been glad if he had brought out the importance of the Pianosa colony, and the agricultural experiment now being carried out at the Tre Fontane, near Rome, the beginning, it is to be hoped, of the vast work of draining the Pontine Marshes. The Appendices to the Edinburgh volume should not be neglected. They contain the Report of the Sub-Committee of the Social Science Association on Copyright, of which the result is now before the House in a Bill brought in by Mr. G. W. Hastings, M.P.; and the Report on the Brussels International Congress of Commerce and Industry, held in September, 1880, addressed to the Council by their Delegate, Mr. C. H. E. Carmichael M.A., is useful as containing some of the latest foreign views on Bankruptcy Law and Art Copyright.

Principles of Torts and Contracts. By W. E. BALL, LL.B., of Gray's Inn, Barrister-at-Law (late Holt Scholar). Stevens and Sons. 1880.

Mr. Ball here addresses himself to the supply of the student's wants, for whom the classic volumes of Addison are as "caviare." Thus while acknowledging his necessary indebtedness to those master works on this branch of the Law, our author is able to strike out for himself a different line and to digest for the use of the *discipulus* the Law which the practitioner seeks in Addison. Mr. Ball places the illustrative cases which he has selected, in a separate place at the end of the chapter to which they refer, and not at the foot of the page. This method has both advantages and disadvantages. It avoids the crowding of the page, and leaves the author more freedom as to the length of his extract from the judgment cited. But unless the student turns at once to the reference indicated by the numerals in the margin, he may have a good deal more turning to and fro of the pages, before he grasps the illustration in its bearing upon his text. One illustrative case the student is pretty sure to remember; it is No. 11, on p. 78, *Aberdeen Arctic*

Co. v. Sutter, and defines when a whale is a "loose fish." The volume will be a useful companion to the student while attending lectures at the Inns of Court.

The Law of the Road. By R. VASHON ROGERS, JUN., of Osgoode Hall, Barrister-at-Law. Carswell and Co., Toronto, and Edinburgh. 1881.

This book, written in Ontario, published in Canada, in the United States, and in Great Britain, well deserves the success with which it appears to have met. It is, in some respects, very unlike the ordinary law-book, for it decidedly means to combine *utile dulci* in a manner whereunto the graver Briton is a stranger. Not so the lively American, whether from the Granite State or from the land erstwhile ruled by Carpet-baggers. The tone of the writing is, indeed, very American, and reminds us forcibly of the legal *facetiae* which some of our American exchanges print. But for this very reason, it would be possible for the handy compendium of Travellers' Law here furnished us to be read profitably in a railway car, or on board a lake or river steamer, which is distinctly one of the objects its author had in view. The cases cited, and they are cited throughout, in support of every proposition of importance, however quaintly put, are American and Canadian, of course, quite as much as English. But that is rather an advantage than otherwise, in these days of "Round the World" Tickets, when even a British reader of Mr. Vashon Rogers's book may chance to study it first on the Lake Shore Railway quite as probably as on the London and Brighton line. There is a slight divergence of opinion, we observe, between our author and his binders, or printers, as to the spelling of his name. It is given as "Rodgers" on the back of the volume, while printed "Rogers" on the title-page. We trust the "Canadian Beaver" will not wrathfully whisk his maple leaf at us for delicately hinting at an antinomy which should be removed in a future issue. We can recommend the book, under whatever form of its author's name, as a useful and lively companion for the traveller by road, rail, or river, and at the same time a trustworthy source of reference for the practitioner. For the latter, a Table of Cases would be a desirable addition.

THE LAW MAGAZINE AND REVIEW.

No. CCXLI.—AUGUST, 1881.

I.—SHERIFFS AND SHERIFF COURTS IN SCOTLAND.

THERE is scarcely any older office in Scotland than that of Sheriff.* The name is derived from shire-reeve, that is, the magistrate or ruler of the shire, or part of the country sheared or cut off; and to this day a large and important part of the common law jurisdiction exercised by the Sheriff is as "Judge Ordinary of the bounds." In Scotland, as indeed in all countries where the Feudal system prevailed, the great landed proprietors asserted of old an almost unlimited jurisdiction in regard to crimes committed within their territories, as well as a civil jurisdiction of a less extensive character, whose duties they discharged with the aid of their vassals or freemen as jurors. In some cases the right of criminal jurisdiction was derived from royal grant, either in the form of a barony, or of a holding *cum fossa et furca*, that is—as it was pithily translated—"a right of pit and gallows." This latter class of grant was of frequent occurrence. In nearly all the

* It is noticed, says Sheriff Barclay (*Digest of the Law of Scotland*. Edinburgh: T. and T. Clark, 1880), under Alexander I. (1107-24). A statute of Alexander II. (1214-49), cap. 14, directs the attendance of Sheriffs or their deputies at the Courts of Bishops, Abbots, Barons, and Freeholders (Alexander Robertson, *The Government, Constitution, and Laws of Scotland*: Stevens and Haynes, 1878).

more important old castles the tourist is shown the dismal dungeons or pits into which often the prisoners had to be lowered. The visitor to the yet inhabited castle of Cassilis, in South Ayrshire, cannot fail to observe from its northern windows the mighty "dule tree" close by on which the rough Kennedys hung more than gypsies; and the antiquarian who finds his way to the remote ruins of Edzell Castle, in Forfarshire, can see from the window of the banqueting hall the gallows-knowe, on which the victims of the Lindsays of the "proud House of Edzell" were led out in the evening to die.

To assist the heritable proprietor in his capacity of territorial Sheriff when points of law came up, or frequently to act for him, there was his Sheriff depute. On the other hand, the Crown persistently strove to introduce its own authority. Twice in the year—on the grass and on the corn—its Justiciar held his Courts throughout the country; and a Sheriff, called for distinction the King's Sheriff, was appointed to live in the shire and look after the interests of the Crown. One part of his duty was to collect, with the assistance of his fiscal, the Crown revenues, and another to attend the local Courts as inspector, and see that justice was properly administered. It is little matter for surprise that—just as in the case of the clerk of the Justiciary Court, eventually the Lord Justice Clerk—the Sheriff's functions gradually assumed a judicial character, and, aided by the powerful and friendly backing of the Supreme Court, he drew to himself more and more authority, and so enlarged the sphere of his duties that ultimately it often became necessary for him to appoint one or more substitutes who acted for and under him. In some cases even the King's Sheriffships became hereditary in certain families.

But the evil results of such a system, and, indeed, of the judicial rights of territorial magnates, were found to be so serious and so adverse to the national interests in the case

of the Highland insurrections, that by an Act of Parliament, called the Heritable Jurisdictions Act, which came into force in 1748, all the local jurisdictions, other than those of the high constable and of the baron-baillie and burgh Courts, were swept away; and the Sheriffship or, to speak accurately, the Sheriff-Deputeship, was confined to the appointees of the Crown, who were required to be in future Advocates of three years' standing. The office of Principal or High Sheriff was, at the same time, annexed to the Crown; the appointment, if for a definite period, limited to one year, and the occupant debarred from exercising any judicial, civil, or criminal authority. The term "High Sheriff" is, so far as I can find, introduced on this occasion for the first and only time into Scotch legal nomenclature; and, perhaps in consequence of the phraseology of this statute, the Lord Lieutenant of a county is sometimes termed (incorrectly, I think, unless it is in his commission) the Sheriff Principal or High Sheriff. But with the scope of this paper that matter has little concern. As matter of fact there are now only two Sheriffs—the Sheriff-Depute and the Sheriff-Substitute, or, as they are termed in regard to the county of Kirkcudbright, Steward-Depute and Steward-Substitute. "Steward" was the title given of old to the magistrate of Crown lands; and on the forfeiture to the Crown of the extensive lands of the Balliol and Comyn families in this county, a Crown magistrate was appointed over them. To both Sheriff and Sheriff-Substitute the term Sheriff is indifferently applied, alike in Acts of Parliament and in common usage, unless where it is desired to distinguish the one as Appellate Judge from the other as Judge of first instance.

There are also in every county, except at those Sheriff Courts where there is more than one Sheriff-Substitute, one or two honorary Sheriff-Substitutes, who are appointed by the Sheriff, and hold office during his pleasure, but receive

no remuneration. Their commission authorises them to act during the illness or absence of the Sheriff-Substitute; it confers on them all his powers; and it has the effect of making them *ex officio* Justices of the Peace, though generally they are so already. With the aid of the Sheriff-Clerk they dispose, when necessary, of routine, incidental, and criminal business. But if matter of difficulty arises, as the commission of each Sheriff-Substitute extends over the whole county, the application is either made to some other Sheriff-Substitute of the county, if there is one, or kept till the return or recovery of the regular Sheriff-Substitute. If his illness or absence is of any material length an interim Sheriff-Substitute is appointed at his expense.

Officials.—The officials of a Sheriff Court are the Sheriff, Sheriff-Substitutes, Sheriff-Clerk, Procurator Fiscal, Auditor, Procurators, Sheriff Officers, and Bar Officer.

Sheriff.—The Sheriff is appointed and paid by the Crown, holds his office *ad vitam aut culpam*, and must be an Advocate of three years' standing. Originally his remuneration was derived from fees and fines; but there was so manifest an injustice in such a system of remuneration, and especially in that part of it which consisted of a percentage on the amount of the sentence money, that it was put an end to. A Sheriff may have more counties than one within his jurisdiction. In 1746-7, when the Act abolishing the heritable jurisdictions was passed and matters were put on their present footing, there were twenty-seven Sheriffs for the thirty-three counties of Scotland. As, however, the occasion for their services grew less and the facilities of communication increased, it was found expedient to reduce their number. It is now eighteen, and on the occasion of certain vacancies will fall to fifteen. Their remuneration varies from £500 to £2,000 per annum. According to a Parliamentary Return made for the year 1863

there were then twenty-six Sheriffs in Scotland receiving £18,650 among them, or, on the average, £717 each. The sum now divisible among the eighteen Sheriffs amounts to about £15,675, or, on the average £872 to each. As Sheriffs are not only entitled, but expected, to practise at the Bar, and as a few of them hold other appointments, such as professorships in the University of Edinburgh, and memberships of the Boards of Supervision and Lunacy, the Crown has often been enabled to procure at a much lower rate than it otherwise could have done, considering the importance of the duties they discharged, the services of men of position as Sheriffs of counties. Originally the policy of the Legislature was that the Sheriffs should reside in their counties for the administration of justice as much as possible; but as this interfered with their practice in Edinburgh, and as the Sheriff-Substitutes who worked under and for them came by degrees to be selected from men of a higher competency for the post, a change was made, and the Sheriffs, who up till 1838 had to reside at least four months in the year within their counties, are now not expected to reside in them at all for business purposes. They are understood to be in attendance on the Supreme Court, and as regards fourteen of them the obligation to be so is statutory. Of the remaining four, the Sheriffs of Edinburgh and Lanarkshire are debarred from practice, and bound to reside within six miles of their Courts, while the relaxation of the statutory obligation is personal to the other two Sheriffs, and does not extend to their successors.

Sheriff-Substitute.—The Sheriff-Substitute is appointed and paid by the Crown, holds his office *ad vitam aut culpam*, and must be an Advocate, or a Procurator, of five years' standing. Originally, as I have said, he was appointed by the Sheriff, and did not require to be a lawyer. At first his only remuneration was that derived, like the Sheriff's, from fees and fines. But, as might be expected, it came to be

the custom that the Sheriff should pay his Substitute ; and more than two centuries ago the Court of Session commented on "the indecency" of a Sheriff omitting to do so. As the office rose in utility and importance the necessity for its due remuneration increased, and in 1787 the Crown undertook the burden of its payment ; but it was not till 1825 that it was confined to lawyers. The functions discharged by the Sheriff-Substitute of last century consisted chiefly of the disposal of criminal cases, of summary civil work, and of the routine part of the more important civil work. The occupants of the office in this way had little need for a knowledge of law, and owed their appointments to the possession of common sense and business intelligence. They were bankers, factors, retired officers of the army and navy, and the like. Their salaries seldom exceeded £100 a-year ; but, from their being able to follow other avocations also, they were frequently able to put together an amount of remuneration higher than that paid till recently to some of their successors. They held their office during the life of their patron and at his pleasure.

Such was the early condition of the office of Sheriff-Substitute ; but in the beginning of the present century the necessity was recognised of securing for the position men properly qualified to fill it, and of preserving their independence against the caprice of their patrons. It was accordingly enacted in 1825 that a Sheriff-Substitute must be an Advocate, or a Procurator, of three years' standing ; and in 1877 the qualification was raised to five years, so that as matter of law an Advocate is eligible for a Sheriffship two years before he is eligible for a Sheriff-Substituteship. In 1838 it was enacted that a Sheriff-Substitute could neither be appointed nor removed without the written approval of the Lord President of the Court of Session and the Lord Justice Clerk ; the tenure of his office was made *ad vitam aut culpam* ; and a retiring allowance in the case of permanent

disability after certain periods of service was provided. The same statute also codified the rules of process, but so rapid was the growth of the local Courts in popularity and importance, that in 1853, and again in 1876, still greater facilities and improvements had to be provided; and in 1877 a vast increase was made in regard to their jurisdiction, and the patronage of the office was transferred to the Crown.

There are forty-four Sheriff Courts in Scotland, at which Sheriffs-Substitute preside, and eight more places at which they hold Ordinary Courts, and sixty-three more at which they hold Small Debt Courts. In Glasgow there are five Sheriffs-Substitute, and in Edinburgh and Aberdeen two. There are thus fifty Sheriffs-Substitute in Scotland; their number used to be greater; it might, perhaps, without disadvantage be much less. In 1871 the population of Scotland was 3,360,018; that of England was 22,712,266, and it has now only fifty-seven County Court Judges. In several of the Scotch local Courts a few weeks would suffice for the disposal of all the work of the year if it could be brought together, and it might probably easily be overtaken by occasional attendance from other Courts, or by a better distribution of the districts attached to the local Courts. It is questionable whether the legislation is not somewhat antiquated which employs the services of a resident Judge, not for the district adjacent to his Court, but for the county, or division of the county, that includes the town at which that Court is situated. In several instances the county town is situated on the verge of the shire. In one case, indeed, it is incumbent on a Sheriff-Substitute to travel thirty miles, and, as the railway terminus is in an adjacent county, to pass the door of another Sheriff-Substitute's Court, in order to hold his own Small Debt Court a quarter of a mile nearer home. It might be suggested that there is probably no such judicial rookery

to be found anywhere as between Edinburgh and Dunblane. There is, on the average, a Sheriff Court for nearly every eight miles of railway. Starting from Edinburgh with its two Sheriff-Substitutes, the traveller soon reaches Linlithgow where he finds a Sheriff Court; eight miles further on he passes Falkirk, where there is a third; ten miles bring him to Stirling, where there is a fourth; and at the end of five miles further, or forty-one miles from Edinburgh, he arrives at Dunblane, where there is a fifth. While, if he had gone eight miles east of Stirling, he would have found a sixth Sheriff Court at Alloa. North of Dunblane and south of Edinburgh the average distance between each member of the immediately adjacent groups is about twenty-eight miles. And in regard to one of these groups, as it issues on the average rather less than one decree *in foro* per week in the Ordinary Court, it may be safely predicted that, making all allowance for other judicial work, none of the able triumvirate of Judges who are attached to the group of Courts in question, will die of overwork. The Scotch Law Courts Commission suggested in 1870 that the number of head Sheriff Courts in Scotland might be reduced to thirty, and the Sheriff-Substitutes to thirty-seven, provided seven stipendiary magistrates were appointed for certain outlying districts. It is, perhaps, questionable whether the number could not advantageously be made smaller still.

According to a Parliamentary return obtained for the year 1863, there were then fifty-five Sheriff-Substitutes, receiving among them £34,635, or, on the average, £630 each per annum. There are now fifty receiving amongst them £36,685, or, on the average, £734 each. By the Sheriff Court Act of 1853 the minimum salary of a Sheriff-Substitute is fixed at £500 and the maximum at £1000. But by a special Act passed in 1864, the Treasury was authorised to raise the salaries of

two of the Sheriff-Substitutes in Edinburgh and two in Glasgow to an amount not exceeding £1,400; and under the provisions of this statute one Sheriff-Substitute in Edinburgh receives £1,300 and another £1,100, and one in Glasgow £1,400 and another £1,200. Till 1877 the Sheriff-Substitutes in the larger towns received a considerable amount of remuneration in the shape of fees for work done under the Bankruptcy Statutes.* But by a statute passed in 1877 they were deprived of this source of emolument.

A Sheriff-Substitute has no political vote in the county over which he has jurisdiction, except at a University election; and he is bound to reside within his county during forty-six weeks of each year. He is debarred from practising in the Supreme Court, or undertaking any official employment other than the duties attached to his office.

Sheriff-Clerk.—The Sheriff-Clerk is appointed by the Crown, holds his office *ad vitam aut culpam*, and is now in nearly every case paid by salary. Formerly his remuneration was entirely from fees. From the Parliamentary return for 1863, it appears that the thirty-three Sheriff-Clerks of Scotland received in that year amongst them from salaries and fees, £27,545, or, on the average, £835 each. But out of this they would have to pay office expenses.

The Sheriff-Clerk is custodian of the writs of the Court, of the deeds recorded in its books, and acts personally, or by depute, as clerk of all the civil and criminal Courts. As the Sheriff is now Commissary, that is, head of the Courts formerly held by the Bishops in regard to matters of probate, and of a consistorial character (except so far as these have been appropriated to or by the Supreme Court), the Sheriff-Clerk has become, on the occurrence of a vacancy in any Commissary clerkship, clerk of that Court also. It

* In 1863 the amount so earned by each Sheriff-Substitute varied from 0 to 57 guineas,—the total amount received being £569 3s. 3d. In later years it was much higher.

will be thus seen that the office of Sheriff-Clerk is one of importance and responsibility, and in the more extensive Sheriff Courts where the business has to be carried through with extreme rapidity there is requisite on the part of him and of his deputed an intimate acquaintance with the rules of process and a good knowledge of the general principles of law. This is the more needful as under the present system the liability of the Sheriff-Clerk is placed on a footing at once anomalous and unfair. The salary of the office ranges from £78 to £1000; and most of the Sheriff-Clerks carry on other business and hold other appointments.

Procurator Fiscal.—The Procurator Fiscal is the representative of the Lord Advocate as Crown Prosecutor in the Sheriff Court. Formerly he was—as already stated, and as indicated by the latter part of his name—the hand of the Sheriff in collecting the Crown revenues. Till 1877, he was appointed by the Sheriff and held office at his pleasure. But as experience showed that occasions arose which compromised the independence of the Fiscal, and placed him in an embarrassing position through the receipt of directions of one kind from his legitimate superior, the Lord Advocate, and directions of an opposite kind from his patron, the Sheriff, it was deemed expedient to put his tenure of office on a better and more permanent footing. It was accordingly enacted in 1877, that he should in future be appointed by the Sheriff with the approval of a Principal Secretary of State, and should not be removed, except for inability or misbehaviour, and by such Secretary, on the report of the Lord President of the Court of Session and the Lord Justice Clerk. When it is borne in mind that the duties which the Fiscal discharges are executed under the direction, where necessary, of the Lord Advocate and the Advocate's Depute appointed by him, and that in the public interest it is desirable that there should be no connection

whatever between the Judge and the Prosecutor, it may be surmised that ere long the remaining shred of anomaly in regard to the appointment of Procurator Fiscal will be removed. A more difficult matter, though one that ought also to be faced, is the fact that as almost all the Fiscals carry on other businesses as procurators, conveyancers, factors or bankers, their duties to the public and to individuals may and occasionally do come into conflict. The question is just one of money—like that of the Sheriff-Substitute of last century. To get good men at bad salaries, the deficit in emolument is allowed to be drawn from other and possibly prejudicial sources.* The net salaries now range from £50 to £1,100.

Auditor.—The Auditor of Court is appointed by the Sheriff, taxes the accounts of the successful litigants, and is paid by fees under a tariff fixed by the Court of Session.

Procurators.—Causes are conducted in the Sheriff Court by Procurators, or, as they are often termed, Agents or Solicitors, though in cases of importance the litigants are occasionally represented by Counsel from Edinburgh. Members of the Supreme Bar do not, as in England, reside and practise in provincial towns. In Aberdeen the Procurators are in virtue of an old charter termed Advocates. Till 1873, the Procurators of each Sheriff Court were admitted by the Sheriff on passing an examination satisfactory to him, or to examiners appointed by him, and after acquiring certain office experience. They were not entitled to practice in any other county without permission, but in 1873 a statute was passed under which all the Procurators of the country are fused into one body, the *imprimatur* of procuratorial fitness is received from an examining board appointed by seven Judges of the Court of Session, and all Procurators are entitled to practice in

* According to the return for 1863, the fifty Fiscals received for salaries and office expenses, £27,627, or, on the average, £552 each per annum.

any Sheriff Courts in Scotland, on whose rolls they think fit to get their names inscribed.

Sheriff Officers.—The writs of the Courts are served and their decrees enforced by Sheriff Officers who are appointed by the Sheriffs of the various counties, and paid by small fees fixed in part by the Legislature and in part by the Court of Session.

Bar Officer.—The cases are called in Court by a Bar Officer, who receives on the average a few pence for each case.

Jurisdiction.—The jurisdiction of the Sheriff Court is of a very extensive and important character. Indeed in his capacity of Judge Ordinary of the bounds, a Sheriff is thought to be able to give redress for almost any wrong that can occur, or to ward off any that can be threatened. His jurisdiction extends over all the community resident within the county or counties to which his commission applies; over all companies which have a head office within that jurisdiction; over all persons who have a place of business within it, no matter in what part of Scotland they reside, if they are cited at it or personally served; and, in Admiralty matters, over all foreigners, where the action is one which would have been competent against a Scotchman and the foreigner's ship has been arrested. There are also one or two other sources of jurisdiction, as, for example, consent of parties, personal service of the writ following upon contract, and the like.

It is scarcely desirable in an article like the present to seek to detail with minute accuracy the various sources from which the business brought before a Sheriff flows, and therefore I shall content myself with enumerating the more important or interesting kinds. As regards heritable rights, *i.e.*, questions involving the title to real property, he exercises jurisdiction to the extent of £1000; but where the question is only one of possession there is no limit to the

amount. He grants all necessary interdicts or injunctions, decides as to servitudes or easements, removings, questions of nuisance, enforcement of rents and feu duties, service of heir to ancestor, &c. In actions of declarator his jurisdiction extends to £1000. In actions of reduction—that is, actions brought to set aside any agreement or other document—there is no limit where the matter arises in bankruptcy; but, if it arises otherwise, the Sheriff cannot entertain directly any action of reduction, though (and this comes to much the same in the end) he can give the necessary redress where the challenge is made *ope exceptionis*. In regard to moveable rights his jurisdiction is unlimited, and that whether the question is the enforcement of a right or the granting redress for the consequences of its neglect. He decides questions of affiliation, of succession, of aliment between parent and child and *interim* aliment as between husband and wife. In Admiralty matters he has the same jurisdiction in his county and the adjoining seas as the High Court of Admiralty formerly possessed. He discharges the duties performed in England by a revising barrister. He presides at all Parliamentary elections for counties and boroughs; decides all questions in Bankruptcy; appoints judicial factors on estates not exceeding £100 per annum in value; and hears appeals against assessments under local statutes. In Poor Law matters he disposes of all appeals against the refusal of relief; and authorizes, after enquiry, the removal of English and Irish paupers to their own country. All orders for the detention or the permanent liberation of lunatics are granted by him. Where errors have occurred in the registration of any birth, death, or marriage, the error is ascertained by him and corrected under his warrant. He fixes the Registrar's hours; and more than 300 couples a year desiring, from whatever cause, to avoid the publicity or the delay attending an ordinary marriage, declare themselves man and wife, and thereafter

get themselves registered as such, after enquiry by the Sheriff, and under his warrant. Under the Education Acts he settles disputed elections, and differences as to the formation of school districts; decides as to the removal of teachers; and hears complaints against people for failing to educate children under their charge. If a graveyard is to be closed or opened; if an absconding debtor is to be stopped; if considerations of public health require buildings to be altered, wells to be closed, smoke to be stopped, and drains laid or relaid, the ever useful Sheriff is the authority applied to. Where a prisoner dies in jail, he holds a public enquiry; where a person dies under suspicious circumstances, he, if he is satisfied of its expediency, orders a *post mortem* examination; if two conterminous proprietors have tortuous boundaries he "straightens the marches"; if a manse is in disrepair, and the heritors who would have to put it right are dissatisfied with the action of the Presbytery, there is an appeal to the Sheriff. If, without consent, goods have to be sold, or shops shut, or houses opened, or furniture brought back, or payment of taxes enforced—in short, wherever there is a difficulty, the remedy is a petition to the Sheriff. And in recent years very important and anxious duties have been cast upon Sheriffs in regard to the formation or increase of burghs, the appointment of water and drainage districts, and similar matters of local government, which, either by the direction of the Legislature, or under remit from the Home Secretary, are brought before him for disposal. It will be understood that when I speak of the Sheriff as adjudicating on the above matters, I mean generally the Sheriff or Sheriff-Substitute; as a matter of fact, it is almost invariably the latter.

Civil Courts.—The chief Civil Courts in which a Sheriff presides are called the Ordinary, the Debts Recovery, and the Small Debt Courts. In the last, all civil and maritime questions where the sum claimed does not exceed £12 are

disposed of. Cases in this Court are heard without any written defence. The Sheriff has before him only the formal printed summons, in a blank part of which, or on a piece of paper attached to the summons, the pursuer has stated the amount he claims from the defender and the nature of his claim. This is a very popular Court. During 1879 more than 57,000 cases were disposed of in the Sheriff's Small Debt Court; Glasgow, as the mercantile centre of Scotland, taking the lead with over 19,000. The average roll there is 124; but, as in summer, the cases are much fewer, a Glasgow Sheriff has in winter generally to face a roll of about 200 cases for his day's work, but occasionally of 300 and even 400. The great bulk of these, as might be expected, is disposed of by a decree in absence of the defender—the number in which both parties appear being generally about a third. The judgment of the Court is given orally, and the result noted by the Clerk of Court in the Book of Causes. Against this judgment there is practically no appeal, for the only ground of challenge is personal misconduct of the Judge. The expediency of such finality may be questioned; it would seem more reasonable that there should be an appeal, with the leave of the Sheriff, on any difficult question of law. But the policy of the Legislature has been to discourage appeals in cases of small value, forgetful apparently that as it compels all questions under £12 in value to be tried in the Small Debt Court, and questions of workmen's wages rarely exceed that sum, the result is practically that the working-men of the country know for the most part of no Judge but the Sheriff-Substitute. Frequently one case is brought to test a question; and some dozen or some hundred cases which have not been brought into Court are ruled by the decision pronounced on it. It is only right to say on behalf of Sheriff-Substitutes that as they are conscious of the importance due to the finality of their judgments in this

Court, no cases are more faithfully considered and decided—frequently by written opinion given after some days interval—than cases of delicacy in the Small Debt Court.

In the Debts Recovery Court the Sheriff hears mercantile and domestic claims of from £12 to £50 in value. Agents are entitled to appear, and are remunerated under a meagre tariff of fees. The summons is like the Small Debt Summons, but the Sheriff with his own hand, or by that of the defender or his agent, makes a note of the pleas in defence; and a few days afterwards hears the witnesses, and gives judgment in writing. The evidence is only recorded if one or other party asks it; if it is recorded there is an appeal on fact and on law to the Sheriff; if not recorded, on law only. If the case is one over £25 in value there may be a further appeal to the Supreme Court.

In the Ordinary Court the cases are conducted nearly in the same way as in the Supreme Court, and from a half to two-thirds of his work is disposed of by a Sheriff-Substitute in this Court. The cases range over all degrees in value. Unfortunately there is not in the Scotch, as in the English statistics, any information furnished as to the values of the cases; but I find from a note which I made of the cases before me during the last two years that the average sum concluded for was over £159. The procedure in the Ordinary Court is rapid, cheap, and distinct. The initial writ is called a petition. It states who the pursuer is, who the defender is, and what the pursuer wants from him. Thereafter come a few paragraphs, called the Condescence, in which the pursuer narrates the facts by reason of which he thinks his demand is justified; and after these come his pleas in law. A copy of this writ is served on the defender, and he within seven days—or a shorter period if from the urgency of the case the Sheriff thinks such course expedient—lodges with the Clerk of Court a notice of appearance if he resolves to defend the case. On the first Court day

thereafter the case is called in Court, defences are given in, and if necessary a revisal of the pleadings ordered. In about seven days afterwards the record is closed, the agents are heard, and the case decided where that course is possible. But if a proof is necessary to clear up the facts, a day is fixed, from one to six weeks distant, on which the parties with their agents and witnesses attend, and the evidence given is formally noted down by the Sheriff or by a shorthand writer, after which the agents briefly argue the case, and the Sheriff takes it to *avizandum*, as it is termed, to allow him to consider the case, and put his judgment in writing. When it is ready he hands it to the Sheriff-Clerk, who has a duplicate made; the process is made up, and the judgment is issued to the parties, and a brief note of its tenor made in the Act Book of Court.

In cases of much urgency the procedure is condensed and the action is at times run through Court in from four to ten days; but as an ordinary rule a case, unless delayed by appeals, is disposed of by the Sheriff-Substitute within from three to eight weeks after it comes into Court. The too great cheapness of the appeal to the Sheriff and the delay it causes can become in the hands of an obstinate or dishonest litigant the source of oppression and injustice to his opponent and of a grievous waste of time. So much was this the case that the Legislature had to intervene, and now practically the only appeal that can be taken before a judgment on the merits is given is one against an order for proof. At the cost of twenty to sixty shillings as his own agent's fee, a fraudulent defender can stave off progress in the case for two or three months, and, further, gain as much more time by appeal against the judgment on the merits. Most unfortunately, too large a proportion of appeals both to the Sheriff and the Supreme Court are of this character. But it has, on several occasions, been held by Sheriffs that an agent is not entitled to acquiesce in the judgment of a

Sheriff-Substitute without the special sanction of his client.

On the judgment becoming final, if the loser does not "implement" it, the successful party obtains an extract of its tenor from the Sheriff-Clerk, and by means of a Sheriff-Officer charges his opponent to comply with the judgment within seven to ten days. If this proves futile he could, till this present year, imprison the debtor if the debt was over £8 6s. 8d. By an old statute called the Act of Grace, the prisoner could then appeal to the Sheriff to get his creditor ordered to aliment him; and if the Sheriff thought the creditor's conduct oppressive, he could cause the debtor's speedy liberation by fixing aliment at a rate that the creditor would not care to pay. The fear of being imprisoned was unquestionably a most powerful compulsor in effecting payment. But as imprisonment is now done away with, except in a few instances, the creditor's remedy will be either to "poind" and sell his debtor's goods, or, if they or his money are in some third person's hands, to arrest them there and bring an "action of forthcoming" under which the arrestee will be alike enabled and compelled to hand over the money or goods to the arresting creditor. It may be of interest to explain that a "poinding" consists in a Sheriff-Officer going with a warrant to the place where the debtor's goods are, getting their values appraised by two persons, leaving a note of this—a "schedule of poinding," as it is termed—with the debtor, and, after giving in a report to the Court, selling the goods publicly after intimation of the sale by handbills, or by the bellman, or both.

Such is a hasty outline of the procedure in the three chief civil Sheriff Courts. The mass of miscellaneous subjects which I previously enumerated as being brought to the Sheriff for disposal are dealt with for the most part in a summary manner. The total number of applications made

in the Sheriff Civil Courts during the year 1879 amount, so far as noted in the Judicial Statistics, to 92,190; and of these 29,741 were made in Glasgow. During that year, 1,706 appeals were presented to the Sheriffs against 1,310 of these applications in their various stages. This small proportion is due to various causes. Many of the matters were too simple to justify appeal; and in the great bulk of the work, *e.g.*, against the judgments of the Sheriff-Substitute in the Bankruptcy, Small Debt and Ejection Courts, and on almost all the miscellaneous matters, there is either no appeal at all, or only to the Supreme Court. Of the 1,706 appeals 743 were to the Sheriff of Lanarkshire; 188 to the Sheriff of Edinburgh and Haddington; 120 to the Sheriff of Forfar; 101 to the Sheriff of Aberdeen and Kincardine; and 554 to the remaining fourteen Sheriffs of Scotland; or nearly forty on the average to each. This, however, is not the only work done by the Sheriff-Depute. In the Ordinary Court fifty-one cases were disposed of in which the final judgment was pronounced by them alone; in the Debts Recovery Court one of their number, the Sheriff of Edinburgh and Haddington, disposed of 144 cases as Judge of first instance. The other Sheriffs dispose of five once a year, at least, they are all bound to preside in the Small Debt Court, and some of them sit much oftener; a few of them take some part in the disposal of the criminal trials; most of them undertake the work of revising the electoral rolls; and all of them conduct a considerable amount of correspondence in regard to the arrangements made in their counties for the transaction of public business and the preservation of the peace, as well as with the Government and Exchequer.

Criminal Jurisdiction.—Civil Jury Trials have long fallen into disuse in the Sheriff Court except for assessing the value of land taken under Parliamentary authority; but criminal jury trials are common. In 1879 there were 1,129 persons

tried in this way ; while 805 were tried summarily.* If a person is accused of a crime which is of too serious a character to be heard summarily, he is brought before a Sheriff immediately after his apprehension, told what the charge against him is, and offered the opportunity of making any statement he may wish. This is called his declaration. And a few days afterwards, when the Prosecutor Fiscal has had time to examine the witnesses, their "precognitions" and the prisoner's declaration are considered by the Sheriff, and the person charged is either committed for trial or liberated.

In ordinary criminal matters, the jurisdiction of the Sheriff is very important and extensive. It formerly included capital offences ; but it is now exclusive of four pleas which are called the pleas of the Crown, namely, murder, rape, robbery, and wilful fire-raising. As the Sheriffs have frequent occasion to try attempted fire-raising, assaults, thefts, and assaults with intent to ravish, it is difficult to see why any plea save murder is excluded from their cognizance. It occasionally happens that the evidence given shows that the crime, though charged by the less title, amounts to the greater, whereon, as pointed out by the Law Courts Commission, there may be a miscarriage of justice, for some Sheriffs think they are in that event bound to stop the trial, with the result that the prisoner goes free and cannot afterwards be tried. In hearing cases summarily the maximum sentence is a fine of £5 or £10 (according to the statute founded on) or sixty days imprisonment ; when with the aid of a jury, there is no limit to the fine, but the imprisonment, it is commonly thought, cannot extend beyond two years. In both cases the prisoner may be further required to find security for his good conduct

* This number would be much enlarged if I included in it the police cases tried by the two Sheriffs-Substitute in Edinburgh, who for six months in the year act also as stipendiary magistrates.

under the pain of fine or imprisonment ; and the imprisonment may always be accompanied with hard labour. Of old, the Sheriffs had occasion not infrequently to pronounce sentence of death, or of flogging, or of banishment from the shire. Now the first, though not altogether incompetent, has for long been unknown ; flogging can only be ordered to be inflicted on males not over sixteen years of age ; and banishment from the shire has fallen into disuse. A Sheriff, it is generally thought, could never pronounce a sentence of banishment for life from the kingdom, but deportation to the Plantations in America was competent, and seems to have been in use about as long as the Plantations were part of the Empire. Quite recently, when looking into the records of the Glasgow Sheriff Court, I saw a case in 1761, in which, when the Sheriff had pronounced sentence of death, the prisoner thereafter petitioned the Sheriff to deport him to the Plantations instead. As penal servitude comes in lieu of transportation the power of pronouncing sentence of penal servitude has been withheld from Sheriffs. It is perhaps unfortunate that this is so. Judges holding a similar or lower position in England can award this punishment ; and one evil result is that prisoners have frequently to wait longer for trial, and while some are punished insufficiently by the Sheriff, others are occasionally over sufficiently punished by the Supreme Court Judge, if they happen to be involved in the same crime with some offender whom the Sheriff cannot punish sufficiently and is therefore not allowed to try.

The amount of criminal work of a serious nature disposed of in the Sheriff Court seems to have remained much the same during many years, or indeed to have lessened. It clearly has not increased in the ratio of the population. Certain returns were obtained by Parliament in regard to the business of the Sheriff Courts during the year 1863, and from these it appears that about 3,100 persons were

committed for trial for the more serious class of offences that year against about 2,700 in 1879; and 1,252 persons were tried by Sheriffs with a jury in 1863 against 1,129 in 1879. To some extent this, like the great decrease in the number of persons tried summarily, is due to the erection of police burghs and the services rendered by the civic magistracy under the powers (sometimes of a very sweeping character) exercised by them. Still, making all allowance for this, there is, I think, good reason for believing that there has been an encouraging diminution of the more serious crimes; and this view of matters has received not infrequent corroboration from the remarks of the Judges in closing the Circuit Courts.

But as regards business in the Sheriff Civil Courts, the growth has been very great. The legislation of recent years has fostered the civil business of the Sheriff Courts to a large extent. Judicial statistics began to be issued regularly only in 1868; but the first set that gives all the necessary information for comparison with that for 1879 is the set of statistics for the year 1873. The following was the number of applications in the more important Civil Courts during these two years and does not include a great many thousand other matters.

| | 1873. | 1879. |
|-----------------------------------|--------|--------|
| Ordinary Court Cases | 6,311 | 8,982 |
| Debts Recovery Court Cases ... | 3,318 | 6,311 |
| Small Debt Court Cases ... | 42,140 | 57,335 |
| Administrative, &c., applications | 9,379 | 15,122 |

In 1863, the Ordinary Court cases which correspond pretty closely to those now disposed of in the Ordinary and Debts Recovery Court combined, seem to have amounted to about 8,022 against 15,293 in 1879.

This rapid increase in the civil business is far more than proportionate to the increase of the population of the country, and is due to four causes. The growth of mer-

cantile business has probably led to a like growth in differences inevitably arising between the parties to them, and the speed and cheapness and convenience of the local Courts have tended to draw them thither for settlement. The same recommendations have tapped the supply as regards many disputes that formerly went to arbitration. It is matter of common occurrence to find causes in the Sheriff Court for the settlement of which by arbitration provision has been made, but of which neither party cares to avail himself. The same recommendations, coupled with the diffusion of knowledge in regard to cases and the law applicable to them, through newspaper energy, have attracted into Court a good many cases that would otherwise not have come into Court at all. And, in the last place, they have diverted a considerable proportion of cases that ought to have gone to the Supreme Court into the local Courts. It appears to me that this last result is much to be deprecated. Alike as to competency of Bench and Bar, the Supreme Court never stood higher, perhaps, than it at present does; and the emaciation of its business can hardly fail to lessen the supply and even the forensic experience of those by whom the seats on the Bench of the Supreme Court and the more important local Courts will have to be filled. As regards the Sheriff-Deputes, this evil is only too well marked. Though they can be appointed with two years less experience than Sheriff-Substitutes can, as a matter of fact no such occurrence ever takes place. The latter class of Judges is appointed from the junior Bar, and occasionally from the Bar of the local Courts; the latter from the senior Bar of the Supreme Court. But as the business of the Supreme Court has increased but little, and is despatched with a rapidity that might naturally have invited more business, the work of the seniors has unfortunately been mainly concentrated on a few of the most eminent lawyers, whose very eminence, by procuring

them a connection with the Crown, has disabled them from holding Sheriffships.

I am, I confess, one of the many who think that the existence in a local Court of both an appellate and a primary Judge is now-a-days an anachronism, and is injurious to the interests of the country and of the Bars of the Supreme and local Courts. I have shown that of old the Crown Sheriff-Depute was a resident local Judge, that in 1746 he was released from living in his county during more than four months in the year, and in 1838, from living in it at all; that, practically, the Sheriff-Substitute has come to hold the post he formerly held; and the Sheriff-Depute has drifted into being an appellate Judge in regard to the more important parts of the work in the Civil Courts. The question will probably soon arise whether the duties at present discharged by fifty resident and eighteen non-resident local Judges might not be more acceptably discharged by about thirty resident Judges with better arranged districts than at present. The dissemination of legal knowledge and legal literature throughout the country has enabled the country to get its knowledge speedily and accurately. Formerly it came through the Sheriff alone. The Sheriff-Substitute made up the record, but the Sheriff decided the case. One instance of this I find as recently as 1846. And as regards the work that might be overtaken by the Sheriffs-Substitute it is surely absurd to say they cannot get over more ground and more work with the aid of railways and short-hand than stage-coaches and long-hand. No doubt this means more brain work, at least, if not more physical work; for, the more the cases, the more the mental toil. But no one acquainted with the work of the Sheriff Courts will deny that many of the local Judges might with advantage have more to do. About one-third of the Sheriff Court work of Scotland is done by the five Sheriff-Substitutes in Glasgow,

one-third by the nine next busiest Sheriff-Substitutes, and the other third by the remaining thirty-six. I do not suppose there is any Sheriff-Substitute in Scotland who, if conscious of having too little to do, would refuse to accept more work, always provided of course that remuneration and work increased together. The labourer is, we know, worthy of his hire.

Since the foregoing pages were written, the important debate in the House of Lords, on 22nd March, on the Court of Session Bill has settled the doom of the double Sheriffship; and it may be expected that in little more than a year Scotland will have its local Courts brought into more close connection with the Supreme Courts by the abolition of the existing impediment to a result so desirable. It is to be hoped that the legislation necessary to attain this end will not omit one matter for which, in the interests of the country and of the local Judges, provision ought to be made. It is not certain that the resident shrieval Judges are ineligible for the Bench of the Supreme Court; but in practice such promotion is unknown. Now it is undeniable that every step which is taken to raise the status of the local Judges is of national concern; the better the Judge, the more fortunate the community; and, probably also, the less the work of the Supreme Court of Appeal. Now, if the resident Judges not only get more pay, but have the inducement held out of possible promotion to the Supreme Court, it is obvious that this will tend to attract the candidature of men for the local Judgeships who at present are deterred from accepting such a final settlement of their industry and ambition. On the other hand, if the ability of a local Judge has shown him to be one whose services would be of advantage to the country, it is undesirable that the country should be unable to obtain his services where they will be of most use. At present the only road to the Supreme Bench from the local Resident

Bench is through a Sheriffship ; and if this office is abolished some other road ought to be provided. There are few countries where such promotion is not accorded ; but Scotland is one of these few. And if the training of an appellate Sheriff be of any value, the absurdity is carried still further ; for, while the sixteen non-resident Sheriffs, who dispose of 775 appeals among them, are eligible for such promotion, the two resident Sheriffs in Lanarkshire and Midlothian, who overtake 931 appeals, are denied it. Till 1877 this exclusion was based on the idea that, as the resident Sheriffs and Sheriff-Substitutes could not decide cases of heritable proprietorship, they must have forgotten this branch of law. But as by the Sheriff Courts Act of 1877 such questions have been made competent to them, no tangible ground now exists for their exclusion from promotion if deserved.

J. M. LEES.

II.—THE LAWS OF WALES.—THE KINDRED AND THE BLOOD FEUD.

THE Ancient Laws and Institutes of Wales, of which Mr. Aneurin Owen now many years ago published an edition and an English translation for the Record Commissioners* have hardly hitherto received, even in the Principality, the attention which is their due. Englishmen having at one time somewhat too greedily devoured Welsh myths are now wont to mistrust any information contained in a Welsh document, and thus an indiscriminating credulity has given birth to an indiscriminating scepticism. There seems really very little ground for doubt that the bulk of Mr. Owen's three codes, Venedotian, Dimetian, and Gwentian,

* *Ancient Laws and Institutes of Wales*, 1841. I use the octavo edition, which I believe agrees in all points with the folio.

was at one time law in Wales, or at least was thought to be law. This qualification we add because it is very apparent that a large part of these masses of rules is neither law made by any "sovereign one or many" (to use Austin's phrase), nor yet "judge-made" law, nor yet again a mere record of popular customs. It is lawyer-made law, glossators' law, text-writers' law. That the kernel of the mass is a real old code compiled by Howel the Good about the year 928 is more than probable.* But our documents do not profess to give us the code, the whole code, and nothing but the code. By comparing the several versions which Mr. Owen assigns to Gwynedd (North Wales), Dyfed (South West Wales), and Gwent (Monmouth), we soon come to the conclusion that they have been made at different times, in different parts of the country, and that the makers thereof have held themselves free to gloss, to rearrange, and to introduce new matter. The relation of these versions to the real ancient code is probably much the same as that of the compilations which bear the names of Edward the Confessor, William the Conqueror, and Henry the First, to the codes and statutes of Cnut and his West Saxon predecessors. Between the Norman Conquest and the reign of Henry the Second, there lies a time in which it must have seemed likely that the future of the law of England was committed to glossators and text-writers. This period was brought to a close by Henry's vigorous legislation. But in Wales there was no one to issue assises or constitutions. Much as the later Welsh lawyers must have added to their ancient code, they hardly ever refer to any subsequent legislation. Only fitfully, now and again, were the Welsh people united under one chieftain, and then for the purpose of war, while even in each separate kingdom or principality the king or prince can have had but small legislative power.

* Haddan and Stubbs, *Councils and Ecclesiastical Documents*, Vol. I., p. 211.

The care of the laws belonged not to kings or princes, but to lawyers. It was for them to explain, and in explaining to develop the ancient law. In this there is nothing strange. The really strange thing is that during the period of English history which ends with the Conquest, we hear so very little of "law-men," so very much of real legislation.* For this we have to thank the energetic line of West-Saxon Kings and very possibly the influence of the Frank Empire. In Wales, where no great family succeeded in gaining a permanent, unquestioned, irresistible supremacy, there arose a special class of men learned in the laws, a class quite comparable to that of the German and Scandinavian "law-men," and the Irish "Brehons," and it is not unworthy of note that the one great Welsh law-giving King, Howel the Good, whose code was universally regarded as the very core of Welsh law, was himself a tributary of the English Æthelstan.

From what has been said it will be easily understood that the materials provided by the Ancient Laws and Institutes of Wales should only be used with the greatest caution. They are of very uncertain date; even the dates of the MSS. (and they are numerous) from whence they are taken have not yet been assigned with much accuracy. Again, though in the main they are far more consistent than we might expect, it is sometimes very difficult, or perhaps impossible to harmonise them even when they touch on matters of considerable importance. Clearly the first qualification which should be required of any one who would deal with these materials thoroughly and scientifically must be a very competent knowledge of the Welsh language, its dialects and its history, and the second must be a large acquaintance with other old systems of law,

* Curiously enough one of the few passages in the Anglo-Saxon authorities which mentions "law-men" is a provision for the administration of justice between Englishmen and Welshmen, the "ordinance respecting the Dunsetas,"

for it is at once apparent that this mass of Welsh rules has many and strong resemblances to other masses of ancient law, and in such other masses a sound criticism would find many of its best weapons. But even to one who boasts no such equipment, and who is wholly dependent on Mr. Owen's English version, there are certain things fairly clear and very interesting in these documents, and such an one now submits to his readers a brief account of what seems to him a very noticeable part of the system described in the Welsh laws.*

A fact which at once strikes us is that very great importance is attached to nationality. The pure-blooded Welshman has many privileges which he does not share with any foreigner, or with any one who is tainted by foreign blood. We constantly read of aliens and foreigners, and seemingly a considerably part of the population was, or was deemed to be, of alien descent. But with scarce an exception the alien is a villein; not indeed a slave or bondsman, for below these alien villeins there is a yet lower class of real slaves, whom the Welsh lawyers constantly compare to the beasts that perish and lie unavenged; but still the alien is unfree, is a villein, and the very word *villein* has made its way into Wales. In all respects he is on a lower level than the pure-blooded Welshman. How strict are the notions entertained concerning purity of blood may be seen from the provisions which permit the alien, whose ancestors have for several generations been settled in Wales, to become a true Welshman. According indeed to one authority, but one which seems open to suspicion or worse, no less than nine generations are requisite to purge out the stain of foreign blood, and thus a period of nearly three centuries may elapse before a true Welshman is born of a foreign

* I cite the three Codes as Ven., Dim., and Gwent., respectively by Book, Chapter and Section, and the remaining tracts as Bk. IV., V., etc., here again giving Chapter and Section.

stock.* This is probably exaggeration, but more trustworthy authorities agree that long settlement in Wales is necessary, the number of generations requisite being apparently three.†

On hardly any point is there so striking a difference between the Welsh laws and the earliest English laws that have come down to us. In England, to all appearance, law very rapidly became territorial, and he was a West-Saxon who lived in Wessex. It may well be that for some time after the Teutonic invasion, Jutes, Angles and Saxons thought of their laws as the laws of their race, not of their territory. In Ine's code the Welshman, even when no slave, is clearly not on a level with the West-Saxon ‡ He has a smaller *wer*, probably an altogether inferior status. But Ine's code belongs to the seventh century, and there must have been many Welshmen in his dominions who had become his subjects not by birth but by conquest. No such distinction appears in our next code, that of Alfred, and from that time onwards the laws hardly mention the Wealh, § though a large portion of the population of the south-western counties must have been of British descent, and must have spoken a Celtic tongue. So again after the Danish invasions, "the Danes' law" seems to have rapidly become territorial, and indeed the phrase became the name of a territory. || No-

* Bk. XIII. 2, § 66, 67. This thirteenth book seems to me the least trustworthy of all the authorities, and such I understand is the opinion of better judges.

† Bk., V., 2, § 123, 126, 144.

‡ Ine 23, 24, 32, 33, 46. (I cite the Anglo-Saxon Laws from the second edition of Schmid's *Gesetze*.)

§ Æthelstan, VI., 6. Æthelred, II., 6.

|| It still, I imagine, gives its name to the Hundred of *Dacorum* in the County of Hertford. This means the Danes' hundred, for our ancestors thought it classical to call the Danes, *Daci*. This hundred perhaps got its name as being the only district south-west of the Watling Street, which was under the Danes' law. That law we are told extended to the Watling Street and *eight miles further*. This would nearly include the hundred in question. (*Leges Edwardi Confessoris*. 30 (27).)

where do we hear anything of the archaic system of "personal law," as it is called, or of tribal or national law as we might better call it, which prevailed on the Continent and which allowed the Frank to carry about with him his Salic or Ripuarian law into Saxony or into Lombardy or wherever he might go. Probably what distinguished England from the Continent was this: that on the mainland there was one system of law utterly different from the customs of any of the German tribes, the Roman law. The Church was deeply interested in its preservation, and the clergy secured from their conquerors and converts the privilege of retaining their old law. This made a nucleus, round which an elaborate system of "personal law" arose, each man keeping wherever he might be the law to which he was born. In England, Roman institutions perished, and the British Church gained no hold over the invaders. But be the explanation what it may, the Danes' law rapidly became the law, not of men of Scandinavian descent, but of Eastern and Northern England. Even the Norman Conquest, deeply as it affected the history of our law, placed no new nation alongside of the English. The privileges which belonged to Normans as Normans were very few. At last we find the Common Law of England so utterly careless concerning purity of blood that it holds every man an Englishman if born in the English king's dominions, an alien if born elsewhere. Very different is this from the Welsh law with its excessive care for pure Welsh nationality.

To refer this difference to an ultimate difference in national character would be rather easy than satisfying. Before so doing we should remember that the English conquest of Western Britain must have done much to make the Welsh law the law of a race not of a territory, and to keep alive the memory of pure Cymric descent. The Welsh had an outstanding claim to the whole of Britain, and to no

narrower territory could their law attach itself. In the struggle against English invasion they became an exclusive people.

The same causes which made for the preservation of a national as opposed to a territorial ideal of the state, must have aided the retention in Wales, down to the very last days of Welsh law, of an organisation of society for legal purposes by kindreds and families. No one will now be surprised to find traces of a time when the kindred or clan and not the individual was the true unit of the legal system. But in Wales, so long as Welsh lawyers continued to write about Welsh law, that time had not wholly passed away. The kindred or clan was, to use a phrase but little too technical, a corporation having rights and duties in its corporate capacity, not indeed a corporation created by law, but one which the law must recognise. The constitution of these kindreds and their corporate rights and duties are a matter well deserving of observation, and we may be pardoned for speaking of them at some length.

The kindred (*cenedl*) must have normally been a body of considerable size, for fifty of its full grown male members were often required to act in common, and in some cases even three hundred. It is a body of kinsmen tracing their descent from a common ancestor, and there are some signs of a theory that all these kinsmen are distant from the common ancestor by at least three generations. A family of aliens is not a kindred until at least a certain number (some say nine) generations have passed away. One curious passage suggests that, according to the current notion, this is the way in which all kindreds have been formed.* After aliens have remained in the country for the due time a Welshman is born, and he becomes the head of the kindred, and he is not in law called the son of his father being rather his father's father in the law.†

* Bk. V., 2, § 144.

† Bk. XIII., 2, § 66, 67.

The relationship between the members of a kindred was normally a real blood relationship, but we read of nine methods "by which strangers can become relations."* Each of these consists of some great service done to a kindred, espousing its cause in a blood feud, or the like, and the benefactor thereby becomes a member of the clan which he has benefited. There are other passages which show that similar legal fictions were not unknown. The lord who takes by escheat becomes the son of the dead man,† and as already said a man may be his own father's father. But normally the bond of union was blood relationship, and that agnatic. The bond of kindred was closely connected with the possession of land, and though there is some slight conflict between our various authorities, it seems perfectly plain that according to the oldest law, and the law which prevailed in Gwynedd down to the time of Edward the First, no woman could *in any case* inherit land.‡ In three quite exceptional cases she could transmit to her sons a right to inherit her father's land along with her brothers. It is constantly assumed that is the duty of a woman's kinsmen to give her in marriage where her sons may obtain a paternal inheritance. If they fail in this duty her sons will inherit through their mother. If a Welshwoman be given in marriage to an alien, if she be given as a hostage into a foreign land and there marry, if she suffer rape by an alien, her sons will inherit with their maternal uncles and be members of their mother's kin.§ These (with one other to be hereafter mentioned) are the exceptional cases, and in

* Bk. X., 2.

† e.g., Ven. II., 6, § 28.

‡ The Bishop and Chapter of St. Asaph, stating their grievances against Llywelyn (A.D. 1276), say, "Mulieribus et si alii heredes deficiant, jus successionis hereditarie immo denegat. Set hoc consuetudo patrie est." This admission seems conclusive. See also the Statute of Rhuddlan, and Ven. II., 15, § 1.

§ Ven. II., 15, § 1-4. The same rules with slight variations occur in many other passages.

all others it is through males and only through males that relationship is traced.

A man therefore belongs not to many kindreds, but to one kindred, namely, that to which his father belongs. But it is a very noticeable fact that marriage did not in Wales, any more than in England, take a woman out of her own kindred and transfer her to that of the husband. Here we can only notice this fact, hoping to return thereto at a more convenient season. However, plain it is that in Wales, as in England, the wife remained a member of her own kindred.* But though, as already said, a child normally belongs to his father's kin, there are exceptions to this rule. Owing to the somewhat loose notions of marriage and legitimacy which prevailed in Wales, it was not always easy to determine who a child's father was. Apparently the son even of a common prostitute† is not a child without a father. If the mother can affiliate him he becomes a member of his father's clan. If the attempt to affiliate him be unsuccessful (and no more than one attempt is ever allowed), he becomes a member, and seemingly a perfectly legitimate member of his mother's clan. For him, as for the most lawfully begotten of children, a *werigild* (or *galanas*) is payable, and there being no father's kindred a greater share than usual is paid to the maternal relatives.‡ If the man on whom a child is fathered be living, he may free himself by solemn oath.§ If he be dead then the matter rests with his kindred. Here we see the clan and its chieftain in full activity and get a glimpse of the organisation. The chief with six of the clan may go to the church and there by oath repudiate the child, and seven other members must swear that the oath is pure. If there be no chief, the men of Gwynedd require the oaths of twenty-one kinsmen, while in Powys and Dyfed

* Legg. Henr. Primi. 70, § 12, and Schmid, Anhang VI., § 7.

† "A woman of bush and brake." Gwent. II., 39, § 40.

‡ Ven. II., 31, § 7, 8.

§ *Ibid*, § 4.

there must be fifty swearers. Provision, however, is made to prevent the denial being given by those whose interest conflicts with their duty. Those with whom the child would be entitled to share the paternal inheritance are disqualified to repudiate him. Until solemnly repudiated the child is "a son by sufferance," and the clan must pay if he commits manslaughter, but have no claim if he be slain, having as it were the burden but not the benefit of being related to him.* A solemn and impressive form of adoption is provided. The chief and six of the best men may acknowledge the child. The chief takes the child's hands within his own and kisses it, then places its hands within those of the oldest of the other men, who kisses it, "and so from hand to hand until the last man." If there be no chief, the ceremony is performed by twenty-one (according to others, fifty) of the clan's best men.†

Over the clan there presides a chieftain (*pencenedl*). Concerning the title by which he holds his power, the more trustworthy sources give us but little and that negative information. It is not a hereditary title. "A son is not to be chief of kindred after the father in succession, for chief of kindredship is during life."‡ From this we may infer that though not deemed hereditary, such it was tending to become; and this is probable, for from the same source we learn that the nobility of the chief extended to the members of his family, their *galanas*, or as the English would have said *wer*, being greater than that of the mere non-noble free man.§ Less trustworthy authorities are richer in information. "A chief of kindred is to be the oldest efficient man in the kindred to the ninth descent."|| How far this

* Bk. V., 1, § 7. Bk. V., 2, § 82.

† Ven. II., 31. Dim. II., 8, § 30. Gwent. II., 39, § 40. Bk. X., 7, § 4. Bk. XIII., 2, § 120.

‡ Gwent. II., 40, § 10. § Gwent. II., 5, § 11. Dim. II., 17, § 23.

|| Bk. XIII., 2, § 88.

requirement was actually fulfilled in practice we cannot say, nor is it impossible that age was reckoned in some artificial manner which represented the members of an older line as themselves older than members of younger branches, for by such means a transition may have been made to that hereditary transmission of the office against which the law expressly provides.

The chief's position is one of honour and privilege. In the Welsh laws, as in other ancient systems, every man has his price, the price which must be paid for him in case he be slain. In Wales this price is called *galanas*, and like the *wergild* of the Teutonic nations, it fixes a man's station in society.* Now the *galanas* of the chief is according to the Venedotian Code, "nine score and nine kine once augmented."† Concerning the phrase "once augmented" we can only here say that it seems to mean that the sum named is to be increased by one-third of itself. The chiefs value therefore is 252 kine. He is thus ranked on a level with the highest of the king's servants or officers of state, the steward, the chancellor, and the chief huntsman. The value of the mere Welsh free man according to the same system is 63 kine.‡ In the other codes the difference between the chief and the free man is still greater, the life of the one being apparently nine times as valuable as that of the other.§ In short, no one is more honourable than the chief of a clan, save only the king, queen, heir apparent to the throne, and the chief of the royal household, for even the king has his price in Wales, as in England and in Scotland.

Many other payments are regulated by the amount of a man's *galanas*, for instance, his *saraad* or honour price, the sum

* The same word *galnes* or *galnys* occurs in the old Scotch *Regiam Majestatem*. (*Acts of Parliament of Scotland*, p. 273, 276, 300.) Seemingly it means murder, slaughter.

† Ven. III., 1, § 27.

‡ Ven. III., 1, § 31.

§ Dim. II., 17, § 21, 27. Gwent, II., 5, § 9, 15.

he receives if insult be done him, the *ebediew*, relief or heriot payable on his death, the *amobyr* or fine for leave to marry his daughter, and the *cowyll* or morning-gift and *agweddi* or dower to be provided by her husband. Thus his *galanas* fixes a man's general status, just as in England many legal consequences depend on the amount of a man's *wer*. Judging by this standard, the chief's position is honourable and exalted. He enjoys other privileges and immunities. He receive *galanas* for the death of a kinsman, but does not pay.* He is entitled to twenty-four pence from every youth admitted to the kindred, and to twenty-four pence from every kinsman who places a woman under his protection.† To slay him is among the gravest crimes.‡ In all matters which concern the clan he takes the lead, and if in "counselling" a kinsman he has recourse to a blow, that blow may not be redressed.§

Thus much we have on good authority. The Triads of Dynwal, to which we refer with very much less confidence, ascribe to the chieftain vast political and constitutional importance. For instance, it is by a chief of kindred that an assembly may be convoked for the deposition of an unjust king.|| These Triads bring out very strongly the theory, doubtless the old traditional theory, that the Welsh nation is constituted, not of individuals, but of kindreds each under its own chief. But they are poetic and vague, and probably in their present form of little value as evidence of fact, though of much value as evidence of ideals and aspirations. They leave the impression that the kindred for many purposes, both civil and constitutional, acts as a body, being in some sort represented by its chief. Also the chief has large though rather indefinite powers in the internal government of the kindred and the direction of its affairs. "Every one of

* Gwent., II., 39, § 14.

† Ven. II., 19, § 1, 2.

‡ Dim. II., 8, § 8.

§ Dim., II., 8, § 20.

|| Bk. XIII., 2, § 62.

“the kindred is to be a man and a kin to him, and his word is paramount to the word of every one of the kindred.”* “Three things, if possessed by a man, make him fit to be a chief of kindred; that he should speak on behalf of his kin and be listened to; that he should fight on behalf of his kin and be feared; and that he should be security on behalf of his kin and be accepted.”† “It is the duty of every man of the kindred to listen to him, and for him to listen to his man.”‡ We are told more definitely that he is entitled to maintenance from the ploughs of the kindred.§ He also has the privilege of imprisonment, whatever that may mean.|| He is assisted by a council of seven elders, also by a “representative” of the kindred, and by one who bears the ominous title of “the avenger.”¶ The avenger punishes evil doers and leads the kindred to battle. This must imply important duties, for it is as a corporation capable of making private war that the kindred retains its chief importance in Welsh law. The “representative” must we are told be a learned man. It is for him to act as the chief’s deputy, and we must regard him as the kindred’s peace-maker, negotiator, and man of business. To the existence of the council of seven elders, the avenger, and the representative there is testimony in the “codes,” but hardly anything is there said of their qualifications, rights, or duties.**

Though there is some evidence that the kindred as a corporate body is still capable of possessing property, it is chiefly in the sphere of criminal law, or what we should consider the sphere of criminal law, that it finds scope for its corporate activity. The whole subject of Welsh criminal law is well deserving of examination, but here it is only necessary to premise a brief explanation, and one which will hardly surprise those who are acquainted with other

* *Ibid.*, § 165.

† *Ibid.*, § 163.

‡ *Ibid.*, § 88.

§ *Ibid.*, § 131.

|| *Ibid.*, § 133.

¶ *Ibid.*, § 88, 162.

** Gwent. II., 39, § 38, 55. Dim. II., 8, § 8.

ancient systems of law. The Welsh laws in some cases inflict real punishments. Most frequently these are fines or mulcts payable to the king or lord, but mutilation and death are occasionally though rarely denounced. There is a real penal or criminal law. But this does not extend to what we are wont to think the gravest of all crimes. It does not extend to homicide. Neither manslaughter nor what we call murder was, strictly speaking, a crime at all. It was a legal justification for a blood feud, which feud might be composed by the payment of the slain man's worth or *galanas*, a payment of just the same nature as the *wergild* of our own old laws. Criminal or penal law, the law which does not extort reparation but punishes, seems to have followed the same course of development in Wales as in England. It is seriously doubtful whether at any time before the Norman conquest homicide, unless it was accompanied by some foul and diabolic dealing which made it *morth*, was punished in this country by anything beyond a pecuniary mulct, while it is certain that the punishment of death had long been freely applied in cases of theft and even of petty theft.* There is some discrepancy between the various Welsh authorities as to the limits within which the blood feud is permissible. According to one version of the Venedotian code the slain man's kindred may only revenge his death on the person of the slayer.† Apparently, therefore, in North Wales that step towards the abolition of the feud had been taken which in England was taken by King Edmund. In this case we are able to test the value of the Welsh authorities by appeal to a very trustworthy source. Edward the First issued a commission to examine witnesses from North Wales touching their laws,‡ and one of these

* As to what constituted *Morth*, see Schmid, *Gesetze, Glossar*.

† "No one is to be killed on account of another but a murderer. . . . For "if the kindred disown the murderer, there is no claim upon them." Ven. III., 1, note, § 19. Compare Laws of Edmund.

‡ Printed by Wotton in an Appendix to *Leges Wallicæ*.

gave evidence of just such a limitation of the blood feud as marks the Venedotian code and ascribed it to David ap Llywelyn, apparently the prince of that name who died in 1246.* In the other codes there is certainly no such limitation. An act of homicide if not duly paid for within the appointed time is still a signal for private war of kindred against kindred. That the revenge was not originally restricted to the person of the slayer should be clearly understood, for only thus can we understand the composition for homicide whether it be called *wer-gild* or *galanas*. The slayer's kindred must pay the money, not because they are bound to help a kinsman out of a difficulty, but because they themselves and every of them are liable to the revenge of the slain man's clan. With the money, *wer-gild* or *galanas*, they purchase not their relatives' peace, but their own. On the payment of the *galanas* within due time, what may fairly be called a treaty of peace is concluded. Three hundred men of the offended kindred swear that the slayer is forgiven, and everlasting concord and perpetual amnesty are established.†

* Now first we must notice that though a man properly belongs to one kindred only, namely, that of his father, he is by no means a stranger to his mother's clan. If he slay or be slain, not only his paternal but also his maternal kin are

* The passage is curious:—"Ithel ab Philippi juratus dicit idem in omnibus " cum Kenewrek prejurato, adjiciens quod Princeps potest pro voluntate sua " leges corrigere et in melius reformare, exemplificando de David ab Lewel. avo " Principis nunc, qui delevit per se et consilium suum le Glanas per totam " Northwalliam. Videbatur sibi et consilio suo quod culpa suos debeat tenere " auctores delinquentes, et non alios, qui nichil deliquerint, quod aliter fieri " consuebat colligendo Glanas, &c." (*Wotton*, p. 524). Apparently Edward's commissioners did not understand this, for some one has written in the margin of the Roll, "Inquirendum quid sit Lex Glanas. Examinandum de emend. Legis." We, however, have no difficulty in catching the drift of the remark. According to Ithel, David freed the kin from the feud because he thought it unjust that the innocent should suffer for the guilty, "quod fieri consuebat."

† Ven. III., I., § 16.

involved in the feud. Seemingly it is thought that his mother's kin have only one-third share in him. They pay or receive a smaller part of the *galanas*, the greater part being paid or received by the father's kinsfolk. It is well worthy of note, that of this rule which is firmly established in Wales, we have evidence from England also.* Thus there are four kindreds involved in each feud, and apparently the maternal kin on the one side is at war with the maternal on the other, the paternal with the paternal. At least, paternal kin pay to paternal, maternal to maternal; and paternal swear peace to paternal, maternal to maternal.

When we pass to more minute rules, we find that these were evidently the subject of many differences of opinion. We are told what "some say" and "others hold," and one Welsh lawyer frankly confesses that "the sharing of *galanas*" is one of "the three complexities of the law."† However, even on this dangerous ground, we may take a few steps.

In the first place we must distinguish from the *galanas* another payment, namely, the *saraad*. Whenever a person is subjected to any injury or disgrace, *saraad* is done to him, and must be paid for. Just as every man has a certain price which must be paid if he be slain, so he has a certain *saraad* or, as we may term it, "honour price," which must be paid if he be insulted.‡ The latter price varies with the former. Thus, if a man's *galanas* be three score and three kine, his *saraad* is three kine and three score pence, the one being determined by the other. Similar instances of prices for minor injuries, dependent on the amount of the injured persons *wergild* are to be found in the old English laws. Now, if a man be slain, *saraad* is done him, and must be paid for. But *saraad* and *galanas* spring from different notions.

* Legg. Henr. Prim. 75, § 8, 9, 10. Supported by Alfred, 27.

† Bk. X., 7, § 27.

‡ *Saraad* seemingly means disgrace. I borrow the phrase "honour price" from the translation of the Irish laws,

The *galanas* is payable (as in the English *wer*) for very much less than *murder*. It is payable seemingly for every voluntary homicide; it is payable even in cases where a modern coroner's jury would be inclined to refer death to misadventure, or to the Act of God. *Saraad*, on the other hand, is payable only for injury wilfully inflicted. The difference is brought out thus: If an idiot slay a man, the idiot's kindred must pay *galanas*, but they need not pay *saraad*,* and such also is the case where the slayer is an infant.† To occasion *saraad* there must be bad will; but nothing of the sort is necessary to give rise to *galanas*. But ordinarily, where there is homicide, both payments must be made. Now *saraad* is paid both by and to a narrower class of relations than that which pays and receives *galanas*. One-third is paid to the slain man's widow if he leaves one and the rest is divided among his near relations. Authorities differ as to how near the relations must be who claim the *saraad*. One names only father, mother, brothers and sisters‡ (whom we may call *the household*); another names brothers, first cousins and second cousins § (whom, for reasons which cannot be here given, we may call *the inheriting family*), while others, perhaps describing the practice of a later date, after deducting the widows third mix the rest of the *saraad* with the *galanas*.|| So again the *saraad* is paid by a narrower circle of relations than those who pay *galanas*. Generally, indeed, the books speak as if the offender pays the whole *saraad*, but it seems that at least in case of his insolvency his kinsmen to the distance of second cousins are liable.¶

Now here again is a curious likeness to old English law. The payment of the bulk of the *wergild* was preceded

* Bk. IV., i, § 2, 4.

† Bk. VI., i, § 17.

‡ Dim. II., i, § 14, 16. (In the last of these passages *saraad* in the English version seems a mistake for *galanas*.)

§ Ven. III., i, § 19.

|| Ven. III., i, note § 22.

¶ Gwent. II., 8, § 10. Ven. III., i, § 19.

in England by the payment of a sum to the nearest relatives of the slain. This was the *heals-fang*; in the Latin versions "*apprehensio colli*," the taking of the neck. "*Heals-fang* belongs to the children, brothers, and paternal uncles; that money belongs to no kinsman, except to those within the joint (*binnan cneowe*)."^{*} Our older commentators supposed that *heals-fang* had something to do with the pillory. But Dr. Schmid has ingeniously suggested that it is connected with a mode of representing the degrees of relationship by reference to the various limbs of the human body which was well known among the Germans.[†] It is the portion taken by those who "stand in the neck," those who are within the joint (*binna cneowe*); more distant relations "elbow cousins," "nail cousins," and the like have no share. However, there are many differences between the *heals-fang* and the *saraad*, and we by no means intend to suggest that the resemblance between Welsh and English law is due to any survival of British customs in England, or to any influence of English upon Welsh law.

The *saraad* being paid, it remains to pay the *galanas*, which is of considerably greater amount and importance. Some light on its distribution is thrown by the strange number which the Welsh took as the unit of *galanas*. When these laws were written, the use of money, at least as a means of reckoning, had become common; but the *galanas*, an old traditional payment, is always expressed in terms of cattle. The unit of *galanas*, if we may so speak, the worth of a mere free man, is "three score and three kine," more noble persons being valued at "six score and six," or "nine score and nine." Now the number 63 is not only the product of two very sacred numbers, 7 and 9, but

* Schmid, Anhang, VII. (In the Record edition this is printed at the end of the laws of Edward and Guthrum).

† Schmid, Glossar. *Heals-fang*. Grimm, *Deutsche Rechts Alterthümer* p. 468-470.

it is also the sum of the geometrical series $1 + 2 + 4$ to six places. Six persons or classes of persons can pay 63 cows, the first person or class paying one cow, the second twice as much, the third twice as much again, and so forth. Apparently it was this property of the number which gave it a place in the *galanas* system.

So far as we can see the burden of paying *galanas* was borne thus* :—Divide the whole sum by three; one of the three parts falls on the slayer and his nearest relations, whom we will call his household. Of this the slayer himself pays one-third, his father and mother one-third, his brothers and sisters one-third, the father paying twice as much as the mother, and a brother twice as much as a sister. The remaining two-thirds of the whole sum are again divided by three, two-thirds falling on the paternal, one-third on the maternal kindred. Of each kindred, six classes of relations pay, the first class paying twice as much as the second, and so on. It will be seen that if the total sum be sixty-three, the class which pays least must provide the third of a cow; while if the full *galanas* be "nine score and nine," the class which pays least is liable for just one cow.

The mode of computing the degrees of relationship seems to be "parentelic," that is to say, my father and all his issue constitute a class or *parentela*, but these, since they take the household's third, are not one of the six. The first of the six consists of my grandfather and his issue, other than my father and his issue; the second consists of my great-grandfather and his issue, other than my grandfather and his issue. Thus a sixth cousin is in the last class which pays or receives *galanas*. A mode of reckoning somewhat

* The passages most in point are, Ven. III., 1, and the version in the notes to that chapter, Dim. II., 1. Gwent. II., 8. Bk. IV., 3. Bk. X., 3. The account in the text is compiled from these, and is not exactly borne out by any one of them. The discrepancies, however, seem due rather to imperfections of statement than to any difference of principle.

similar to this was apparently prevalent in England also,* and indeed is still involved in our law of inheritance, which exhausts my father's issue before it passes to the next *parentela*.†

The right to receive *galanas* is governed by much the same rules. There are, however, differences. In the first place, the lord at the time of which these laws speak takes one-third of the whole for his trouble in exacting payment. Then, again, the slain man of course receives nothing, and, consequently, the household's share is somewhat differently distributed. But the most curious point is that a woman pays but does not receive *galanas*. The notion seems to be that she pays as representing her infant, or yet unborn children; for a woman who is past child-bearing, or will swear that she will never have children, is exempt, and if she have children of full age she is absolved by their payment.‡ In cases where she pays she is only liable for one-half of a man's share.§

Apparently each class of relatives is liable to pay or entitled to receive the whole sum allotted to it, however few or many be the members of the class. Beyond the relatives bound to pay *galanas* stand yet remoter kinsmen who, if the sum cannot be otherwise raised, are bound to contribute a "spear penny," and can only escape by swearing that they are of no kin to the slayer.|| But all these rules are probably only rules apportioning the burden as between various members of the kindred. If the whole sum be not paid then there is war between the kindreds, even though certain members of the offending clan have

* Schmid, *Glossar*, *Cneðw*.

† But there are many difficulties about the Welsh reckoning which I cannot pretend to have solved. Ven. II., 1, § 12. Dim. II., 1, § 17-29. Gwent. II., 8, § 1-7. Bk. IV., 3. It is, however, much more intelligible than the Irish.

‡ Ven. III., 1, § 21-23. Ven. II., 1, § 64.

§ Ven. II., 1, § 64. Dim. II., 1, § 16.

|| Ven. III., 1, § 13.

been ready with their contribution—such at least must have been the old rule, though, doubtless, it was mitigated in course of time.

We have already noticed the resemblance to English law in the distribution of the burden and benefit of the composition between paternal and maternal kin in the proportion of two to one. A division of the *wer* into three parts, one of which is paid by the household, one by the father's and one by the mother's kin, is found in the *Lex Salica*.* There is, however, little to be gathered from the so-called *Leges Barbarorum* concerning the mode of distributing the *wer*, and not much more to be gathered from the Anglo-Saxon authorities. Owing to the power in one case of the Frank Empire, in the other of the West-Saxon house, the old *wer-gild* system rapidly gave way before a system of punishment, and it is to the extreme north of Europe that we must look for any body of rules so complicated as the Welsh. The Scandinavian lawmen seem to have delighted as did the Welsh in elaborating the scheme, and anyone who will turn to Wilda's *Strafrecht der Germanen* will find a parallel for nearly every Welsh rule in some authority Icelandic, Norwegian, Swedish or Danish.† For instance, in the East Gothlanders' law, as in the English, as in the Welsh, the paternal kindred pay twice as much as the maternal, while (and this is very remarkable) the West Gothlanders' law has the rule that six classes of relations pay, each paying twice as much as the one which is one degree more distant.‡

* *Lex. Sal.*—De compos. homicid. (Hessel's and Kern's ed., 388-396).

† W. E. Wilda, *Strafrecht der Germanen*, p. 372, f. It seems to me that many, if not most of the writer's conclusions concerning the early stages in the development of criminal law, though derived entirely from Teutonic sources, hold good also as to Welsh law. It is much to be regretted that of early Scotch law we have but the merest fragments, and at present it is hardly safe for any but an Irish scholar to speak of Irish law.

‡ Wilda, p. 379.

It is plain that since every manslaughter involved four kindreds in the feud, some nice questions might arise from the mutual interference of family obligations. A man might be called on to support his mother's kin in a feud against his father's kin. Such a case is actually provided for, and in the strangest fashion. If a man slay another of his own kindred he has to pay to the kindred the *galanas* of the slain, and in this case he alone is liable, for the kindred cannot pay to itself.* He also forfeits his patrimony, and doubtless the law affords him but little protection against the justice more or less irregular of a domestic forum; but lawfully he may not be slain "since the living kin is not killed for the sake of the dead kin."† Now if a man in avenging the death of a maternal relation kill one of his own kindred and thereby forfeit his patrimony, he is to be allowed an inheritance from his maternal grandfather.‡ Perhaps there is no more striking example of the queer mixture of barbarism and logic which characterises these Welsh laws. One of the few exceptional cases in which a woman can transmit inheritance to her son is where that son is a murderer.

Even long after the English had finally mastered Wales, and when there could no longer be any talk of the blood feud as a legal mode of redress, the payment and receipt of *galanas* continued. In the same way in England, long after Edmund's legislation and long after the Norman conquest, we hear of men paying and receiving the *wer-gild*. Among the Welsh authorities there is a book of precedents for pleaders, seemingly of as late date as the reign of Edward the Fourth. This contains "a plaint of *galanas*." "This is the plaint of John, son of Madog, &c., on account "of there being two parts on behalf of the father, and the "third on behalf of the mother of John, son of David, to "whom came Maredudd, son of Phylip, and caused death

* Gwent. II., 37, §. 2.

† Gwent. II., 39, § 54.

‡ Dim. II., 8, § 21. Gwent. II., 39, § 1. Bk. IX., 30, § 1.

to that said John." It then states with good and sufficient pleader's verbiage how Maredudd dealt with the said John, making "an unjust and public attack through wrath and anger, and animosity, and surreption, and disrespect, to the lord, and to the dominion, and to the kindred." It demands the payment of three marks, the worth of a free privileged *uchelwr* (gentleman). It is addressed to "the governors," for "the law has not apportioned to the lord a share in the worth of anyone, but by causing the inquiring party [the plaintiff] to obtain the whole."*

One more testimony to the endurance of the blood feud shall be given, and this from an unimpeachable source, namely, the English Statute Book. First we must notice that if a man be charged with slaying another and wish to deny the accusation, he can do so. The Welsh law, like other old systems, recognizes compurgation as the usual mode of trial, or rather of defence, in criminal cases. The number of compurgators required is very large, far larger than any of which we hear in England or on the Continent. In the case of homicide, the number of men who help the accused in "making his law" is no less than three hundred, and they must be men of his kindred. "The oaths of three hundred men of a kindred are required to deny murder, blood, and wound, and the killing of a person," and therefore, the law adds, the same number of oaths is required when *galanas* is paid and peace thereupon sworn. Now a Statute of the year 1413 (1 Henry V., c. 5), refers to the then late rebellion in Wales and complains that the Welshmen are still taking revenge for the deaths of their kinsmen against the king's faithful lieges; and some of such lieges they keep in prison until they have paid ransom, or until they have purged themselves of the death of the said rebels so slain as aforesaid, "par un assacht selonc la custume de

* Bk. XII., 11.

† *Asach*. An oath, a troth. Pughe's *Welsh Dictionary*.

“Galles, cest a dire par le serement de ccc hommes.” The fact is that the Welshmen had been acting according to their notions of law and requiring three hundred compurgators. This is not the only instance in which our Statute Book bears out the testimony of the Welsh laws, but here, at least for a time, we must take leave of the Kindred and the Blood Feud.

F. W. MAITLAND.

III.—THE GROWTH OF THE GRAND JURY SYSTEM.

THE Great Charter, by its well-known 29th Chapter, declared that no freeman should be taken or imprisoned but by the lawful judgment of his equals, or by the law of the land. This, as explained by Lord Coke, was but declaratory of the common law, and meant that no man was to be restrained of his liberty, unless by Indictment, or presentment of good and lawful men, where such deeds be done; and, as is known, the mode in which such Indictments and presentments were found was by the intervention of the Grand Inquest or Grand Jury, or by its equivalent, the Coroner's Inquisition, in the cases coming within that officer's jurisdiction.

A prominent characteristic of the Anglo-Saxon jurisprudence being the great importance attached to general character, the leading principle pervading the English criminal law, from even the earliest times, seems to have been that, except when taken with the *mainour*, or red-handed, no person should have his liberty imperilled by a criminal trial, unless the circumstances of the accusation were of so notorious a character as to raise a violent presumption of its truth. In a state of society in which everyone was a surety or permanent bail for the good

behaviour of his neighbour, the public opinion of the vicinage was probably the best test of the truth of an accusation, each district having a direct interest in bringing criminals to justice. Even after the functions of the Grand Jury had become distinct from those of the Petty Jury, "le Graunde Inquest" of Edward III. represented the *fama publica* of the country, filling the character of public prosecutors, presenting such offences to the Justices in Eyre as came to their own knowledge, or as were brought under their notice by information supplied by others having the care of the public peace, as previously, under the laws of Ethelred, the twelve senior Thanes of each hundred had imposed upon them the duty of presenting all crimes within their district. So long as the view of frank pledge was observed, there was a public provision for bringing every wrongdoer to justice; but from the time when that ceased, and the community was no longer held responsible for its members abiding the course of justice, public rumour or fame ceased to be represented, except in name, by the findings of a Grand Jury, though even then an accused person had a great advantage in knowing that he could not be put on his trial without the fiat of men of repute in the county where the offence alleged had been committed, in whose minds a violent presumption of the truth of the accusation had been raised.

A felon could not be convicted, even though he confessed the felony, until a Grand Jury had presented the offence; "le Graunde Inquest," as established in 42 Edward III. (A.D. 1368), being summoned to give information to the Justices in Eyre of the crimes that had been committed within the county, as Jurors for the King, upon their oaths, to present for trial all offences against the peace, the Crown, and dignity of the King as opposed to private prosecution by Appeal—the truth of such presentments being subsequently tried by a Petty Jury. At the sitting

of the Eyre, the Justices explained its object, and then delivered their charge, and whatever was inquirable by the Grand Jury in writing (*capitula coronae et itineris*), in modern times conveyed in oral charges; and in their inquiry into such matters as were given them in charge, they were not to try the truth of them (which was the province of the Petty Jury) "otherwise than in that form and matter (according to the nature of the case) the Court and King's Counsel have framed and presented it to their inquiry, where the single fact of unlawful killing another, &c., by the hands of such a one, is proved unto them so far, as in their judgments it is fit matter of accusation, to bring the whole matter of fact, and all that may depend upon it, to a further and more full examination." (Babington's Advice to Grand Jurors, 1677). For the presentment of a Grand Jury was not a verdict; whether they returned Bills *vera* or *ignoramus* the accused was neither convicted nor acquitted; in the first case a further inquiry followed, in the latter, other Bills might be preferred against the same person for the same offence at subsequent assemblings of the Grand Inquest.

According to the original form of the English practice, the investigatory procedure was excluded, and the trial was the only occasion on which the witnesses could be judicially examined. It was not till the 34 Edward III. that the guardians of the peace were empowered to try felonies and misdemeanours, and acquired the name of Justices; and the utmost they could do was to have malefactors apprehended and kept in safe custody till the coming of the Justices of Gaol Delivery. An aggrieved person was therefore usually obliged to wait till the Grand Jury had assembled, and go before them to make his complaint, when if the information conveyed to, or possessed by, them was such as to raise a reasonably strong suspicion that a crime had been committed by the accused within the body

of the county for which only they were to inquire, they were bound to present him.* But in all this there was nothing in the nature of a trial or judicial inquiry; they were merely informing themselves for the purpose of framing accusations against those among the community for whom they were permanent bail, whose conduct was not that of a good citizen. Then, as now, they only heard evidence on behalf of the prosecution; the accused was no party to it, nor was he represented in any way; it was conducted in his absence, the deliberations were held in secret, and, if not already in custody, the first intimation he had of such a charge having been preferred against him was his apprehension under warrant to take his trial. Indeed, so absolutely secret were the whole proceedings of this accusing body that, according to Blackstone, "Anciently it was held that if one of the Grand Jury disclosed to any person indicted the evidence that appeared against him, he was thereby made accessory to the offence of felony; and in treason, a principal. And at this day it is agreed that he is guilty of a high misprision, and liable to be fined and imprisoned" (4 Black., 126).

"Of the procedure before the Petty Jury (wrote Bentham), the characteristic and indispensable property is publicity; of the procedure before the Grand Jury a property still more characteristic and declaredly secured is secrecy; the ceremony of an oath is employed for the securing of it; in the official oath exacted from grand jurors, the promise of secrecy constitutes a distinctive article" (*Principles of Judicial Procedure*).

* The neglect, or omission, duly to prosecute any offence before the Grand Jury usually entitled the wrongdoer who was in custody to a receipt in full down to that date, and he could not afterwards be called on to answer for anything done before the last assembling of the Grand Inquest. It was in view of this immunity that the "proclamation for the King," which is still made by the Crier of the Court when a prisoner is given in charge to the Petty Jury, and the now obsolete form of discharging prisoners by proclamation at the end of the Assizes, were observed.

The object of this secrecy was, of course, in those times when there were no magisterial investigations, and the first intimation to the accused was usually the arrest after the finding of a True Bill, to prevent his getting knowledge of the fact and making his escape. "The original purpose (says Bentham) of this secrecy, was to avoid divulging to the defendant the evidence that might be produced against him in the definitive inquiry called the trial before the Petty Jury. Not divulge it to him? Why not? Lest, by absconding, he should elude the hands of justice" (*Rationale of Judicial Evidence*, chap. 10).

An inquiry conducted on such principles, where according to the direction of Pemberton, L.C.J., in the trial of the Earl of Shaftesbury in 1681, "you are to consider of the case according to the things alleged and proved, unless you know anything yourselves; but if any of you know anything of your own knowledge, that you ought to take into consideration, no doubt of it," was liable to engender many abuses; false accusations might be made, and when political or party feeling ran high, Grand Juries might find Bills without evidence, or ignore them where the charge was clearly established—more especially in Political and State trials.

But though the deliberations of the Grand Jury were invariably secret, it seems that anciently *the examination of the witnesses* was not necessarily so, but, if occasion required it, might be had in open Court. This, it was alleged, might be demanded as of right by those who prosecuted for the King, and was the device commonly resorted to in State Trials, where Grand Juries were contumacious, or suspected of being so, as a means of overawing them. On the trial of the Earl of Shaftesbury in 1681, it was moved, on behalf of the Crown, that the evidence before the Grand Jury might be heard in Court. Whereupon L.C.J. Pemberton said:—"Gentlemen of the Jury, you hear it is desired by the

King's Counsel (and that we cannot deny) that the evidence may be publicly given, that it may not be hereafter in the mouths of any ill-minded persons abroad, to scatter any mistakes or untruths up and down ; or to slander the King's evidence, or to say anything concerning them that is not true ; therefore, we cannot deny this motion of the King's Counsel, but desire that you will take your places, and hear the evidence that shall be given you." But the Jury were not disposed to obey, and, having obtained a copy of their oath and retired to deliberate, they returned into Court and their foreman thus addressed the Judge:—" My Lord Chief Justice, it is the opinion of the Jury, that they ought to examine the witnesses in private, and it hath been the constant practice of our ancestors and predecessors to do it ; and they insist upon it as their right to examine in private, because they are bound to keep the King's secrets, which they cannot do, if it be done in Court." L.C.J. :—" The Judges, for the convenience of the matter, have allowed, that witnesses should go to the Jury, and they to examine them ; not that there is any matter of right in it, for, without question, originally all evidences were given in Court ; the Jury are officers and ministers of the Court, by which they enquire, and evidence sure was all given in Court formerly ; and the witnesses still are always sworn in Court, and never otherwise. And, gentlemen, I must tell you, it is for your advantage, as well as for the King's, that it may be sure, that you comply with your evidence, that you do nothing clandestinely ; therefore, it is for your advantage that this is done, and the King likewise desires it. Now I must tell you, that if the King requires it of us, and it is a thing that is in its nature indifferent, we ought to comply with the King's desire to have it examined in Court ; you shall have all the liberty that you can have in private ; what question soever you will have asked yourselves shall ask it, if you please, and we will not cramp you in time, nor any-

thing of that nature. Therefore, gentlemen, there can be no kind of reason why this evidence should not be given in Court. What you say concerning keeping your counsels, that is quite of another nature, that is, your debates, and those things, then you shall be in private, for to consider of what you hear publicly. But certainly it is the best way, both for the King and for you, that there should, in a case of this nature, be an open and plain examination of the witnesses, that all the world may see what they say."

L.C.J. North added :—" The same thing was stood upon and discussed on the last sessions, and then all the Judges were of this opinion, and in what all the Judges agree to, you should acquiesce. I must tell you from my own experience, when the King will, he ought to have it kept secret ; I have not known it done publicly in the orderly course of business ; but I have often known when it hath been desired by those which prosecute for the King, that evidence hath been given openly, and I never knew it denied " (8 *State Trials*, 775).

Yet, notwithstanding all these precautions and the admonition from L.C.J. North—" Gentlemen, I hope you will consider your oaths, and give all things their due weight "—" The Jury withdrew to consider the evidence, and returned the Bill *Ignoramus* upon which the people fell a hollowing and shouting " (8 *State Trials*, 821) ; and, according to Dalrymple " The acclamations in Court for Shaftesbury's acquittal lasted an hour," (*Memoirs* part 1, Book 1, p. 4).

At the Lent Assizes held in April, 1683, before Baron Gregory, at Derby, a Bill was preferred against one " for being a priest, unto the Grand Jury ; who were Knights of the new order of Addressers and violent Tories, but they were pleased to return thereon ' Ignoramus ' ; but the Judge knowing the evidence to be plain, sent them out to consider of it again, which they did, and brought in ' Ignoramus ' "

again. Upon this, the Judge told them, for the satisfaction of the country, he would examine the witnesses in open Court, which being done, the same Jury, upon the same evidence on which they found before two 'Ignoramuses' found now 'Billa Vera.'"

Babington, in his *Advice to Grand Jurors*, published in 1677, says on this subject:—"In my own experience, for above forty and five years in one Circuit, I have very often known many learned Judges, such as Mr. Justice Doderidge, the Lord Chief Baron Davenport, Mr. Justice Jones, Mr. Justice Whitlock, and many others, often rebuke and reject the presentments of Grand Jurors, in cases of blood, and other felonies, where they have either varied from their evidence, or from the law, the Judges beforehand having received some light of the nature and testimony of the fact from the Informations and Examinations therein delivered into the Court by the Justices of the Peace and Coroners, and often either *put it upon an open evidence in Court* (which is very inconvenient) or discharged them of such a Bill, and bound the witnesses over to the next Assizes (which is also very inconvenient) in regard witnesses may die, or the prisoner may die, and so the forfeiture is lost, and the offence unpunished; and in cases of blood there will be too much opportunity given for compounding and making an interest with the prosecutor and witnesses; and in these modern times, since the happy return of our most gracious sovereign, King Charles the Second, I have known several learned and pious Judges, some since dead, others yet living, and eminent upon the Bench in Oxfordshire Circuit, fine and imprison several Grand Jurors for their miscarriage and misdemeanor in delivering in Bills of manslaughter instead of Bills of murder, against the clear and positive directions of the Court" (Babington's *Advice to Grand Jurors*, p. 204).

In 1667, in the case of *The King v. Sir H. Windham and others, Jurors of Somersetshire*, 2 Keble, 180, eleven of the

Grand Jurors were fined £20 each for refusing to find a Bill for murder "albeit they were satisfied the man died by the hands of the party indicted, and were told this was but an accusation, and no trial of the issue guilty or not guilty." But, according to Hale, fines were only imposed when, having heard the evidence at the bar, the Grand Inquest would not find according to the Justices' directions.

In 1681, a Bill of Indictment for High Treason was presented to the Grand Jury of the City of London against Stephen Colledge, the Protestant joiner, as he was called. Of the witnesses it was said, "It is certainly true, that never men swore more firmly than they did *in Court*, before the Jury, who demanded of the Court a copy of their oaths, and that the witnesses might go with them, to be examined apart; which request was granted to the Jury, and after two or three hours' consideration, the Jury returned, and found the Bill 'Ignoramus.' Upon which the Lord Chief Justice (North) demanded, whether they would give no reason for this verdict; and whether they believed these six witnesses perjured? To which they replied, that they had given their verdict according to their consciences, and that they would stand by it. To which the Lord Chief Justice (North) said: there was never such a verdict brought in the world" (2 *Coke's Detection*). For which "Ignoramus," it was said, Mr. Wilmore, the foreman, was, out of all course of law, apprehended, and examined before the Council, August 16th, and sent to the Tower; and was afterwards forced to fly beyond the seas. But according to North's *Examen*, he was not apprehended for this cause, but the following:—"It seems, some of the neighbours, that had him in detestation, informed that he was a kidnapper, and that he had sent one or two young men to the plantations; and it was verily believed he had sold them there. Upon this, he was taken up and examined, and, afterwards, not only tried at the King's Bench bar and convict (as I find

in the Chronological History of England, 24th May, 1682), but was also obnoxious, if not charged by a writ *de Homine replegiando*, and committed (as the nature of such writ requires) until he produced the persons in order to be uplevied, this was the ancient remedy for the liberty of the subject, and it is indeed more effectual and expedite than an Habeas Corpus."

These returns of *Ignoramus* by the Grand Juries were attributed by the Court party to the Whigs. "Mr. Attorney-General Sawyer (writes North in his *Examen*,) found that, by the Statute 3 Henry VIII., the Judges and Justices had a power to reform the Panels of Grand Juries returned before them, by taking out and putting in names as they thought fit; and the Sheriffs are, by that law, bound to return the Panel so reformed, on pain of £20." The "very fountain of Ignoramus flowed out of Conventicles," and so in 1681, when the Court of Sessions at Hicks' Hall did proceed upon that law, and reformed the Panel by taking out some Dissenters' names, persons obscure, and not known to the Justices or Chief Constables; and the Court required the Sheriffs to return the Panels accordingly, and they refused to do so. Upon a representation of this undutiful insolence of the Sheriffs, the King ordered that all the Judges should attend at the Old Bailey, and the same proceeding to be had there, when, perhaps, more respect might be paid to the Judges than had been to the Justices of the Peace; at least, they knew, and were able, better to deal with them."

"At the Sessions at the Old Bailey before Michaelmas Term, 1681, the King commanded the attendance of the Judges; they were all present, except Justice Charleton and Baron Street. Mr. Solicitor-General being present, and other counsel for the King, he informed the Court that the Grand Jury that was returned, consisted of persons disaffected to the Government, and criminal in not going to

church, and resorting to conventicles, and desired that the Court would take consideration thereof, and reform the Panel according to the power in 3 Henry VIII.' The Court thereupon opposed some that were objected to; and one not giving a clear answer to his not coming to church, and another declaring he went sometimes to church, and sometimes to other places, which the Judges understood to be conventicles and he not denying it, the Court thought fit to enjoin the reforming the Panel and it appeared necessary to put in others, else there had not been twenty-four according to the command of the writ. The Sheriff (Pilkington) boggled at it, insisting that it would reflect upon them and condemn their first return, and also upon those jurymen that were put out, and desired that it might be made appear that the Panel was corruptly made, and within the cases cited in the Preamble of the Statute, before they should be put to return the Panel. But the Court told them, that there were certain ill cases recited in the Preamble, which, it may be, were the occasion of making that law; yet all ill cases were not recited, and, by the enacting clause, power was given to the Judges in all cases to reform the Panel, by putting out and putting in; and the Sheriffs were enjoined to make a return accordingly. That the Court was not bound to show any cause, for they were entrusted to do it at their discretions; but they had here proceeded upon a cause, inasmuch as they thought men, who were breakers of the King's laws, not fit to serve upon juries, as they that refused to go to Church, or frequented seditious conventicles, were; and therefore they hoped the Sheriffs would be candid in their obedience, and, having taken an oath to perform the office of Sheriffs, they would not, in the face of the Court, break their oath in refusing. They desired to advise with counsel, but the Court told them that it was very indecent for them to ask to go to counsel what the law was, when all the Judges had

declared it, or whether they should obey, if it were so. Then they said, what needed it, when there were enough besides, and the Court might forbear swearing those men. But the Court persisted to require them to return the Panel, and said that those men had brought a suspicion upon the whole Panel, and it became the Court to make use of all the powers the law gave them, to provide for impartial returns of Juries; and, at last, the Sheriffs consented to return the Panel" (*Examen*, Part 3, Chap. 8).

The immediate occasion of these proceedings was the return of *Ignoramus* in the Earl of Shaftesbury's case; and now, having shown what the Court could do, it was hoped the Grand Jurors would be "more modest, and not oblige the Court, in other instances, to use the extremity." So, after this a Bill for high Treason was preferred against one Rous, "a Wappinger, and good at mustering seamen;" and to take away from the Grand Jury, already sworn, "all subterfuge of excuse, Counsel for the King moved the Court at the Old Bailey, that the evidence might be given to the Grand Jury openly; the Court declared they could not deny it; and the witnesses were heard openly, and the Jury charged upon it to consider of the Bill, who, being retired, sent presently for some of the witnesses; and the Counsel for the King informed the Court of it, and promised, that, if the Grand Jury would ask any questions, they should ask them in public. The Court sent for the Grand Jury, and declared to them that they should have liberty to ask the witnesses, but it ought to be in public, as the first examinations were, being so required of the Court by the King. The Grand Jury told the Court, with much confidence, they thought the first examination was for the satisfaction of the Court, and they did not much mind it; *that it was their privilege to have private examinations, and they could not depart from it.* The Court told them they had a privilege to debate privately, and were sworn not to reveal one another's

secrets; but, as for the King's evidence, there was no need of keeping that secret, unless the King's Attorney desired it, but it might be public or private, as the Court should direct, and they were bound to follow the direction of the Court in this matter." "But nevertheless the Jury brought in *Ignoramus*" (North's *Examen*, Part 3, Chap. 8). In 1682 he adds, on the election of Sir John Moor as Lord Mayor, and the appointment of Sir Dudley North and Sir Peter Rich as Sheriffs, "*Ignoramus* vanished."

The overt acts alleged against Colledge already referred to, having been done in Oxfordshire as well as in Middlesex, it was determined to proceed to indict and try him in Oxfordshire; and the Assizes being then at hand, the witnesses were sent down, and a Bill preferred to the Grand Jury of that county; "and there, to make sure work, the King's Counsel are privately shut up with the Jury till they had found the Bill, which Mr. Hawles says was a most unjustifiable practice." The presence in the Grand Jury room of the law officers of the Crown was sought to be justified on the ground that the prosecutor, who is usually the principal witness in a case, is with the other witnesses admitted to the Grand Jury room, and as the sovereign cannot prosecute in person but only through his officers, they are equally entitled to go before the Grand Jury, which would be a fair enough argument had they gone before them as witnesses, but they did not. Thus, among the Resolutions of the Judges upon the case of the Regicides, in 1660, as given in Kelyng's Reports, was the following:—"It was resolved that any of the King's Counsel might privately manage the evidence to the Grand Inquest, in order to the finding of the Bill of Indictment, and agreed that it should be done privately; it being usual in all cases, that the prosecutors upon Indictments are admitted to manage the evidence for finding the Bill, and the King's Counsel are the only prosecutors in the King's case,

for he cannot prosecute in person." Sir John Hawles, Solicitor-General in the reign of William III., writes, "I know, in Fitzharris's case, the King's Counsel were cajoling the Grand Jury in private for some hours," and on the Indictment of Hardy and others for Treason, in 1794, the Solicitor for the Crown attended the Grand Jury for the purpose of managing the evidence—but in this instance, at the desire of the Grand Jury and by leave of the Court. Sir John Hawles, in his remarks on Colledge's Trial, writes:—"I know not how long the practice in that matter of admitting counsel to a Grand Jury hath been; I am sure it is a very unjustifiable and unsufferable one. If the Grand Jury have a doubt in point of law, they ought to have recourse to the Court, and that publicly, and not privately, and not rely upon the private opinion of counsel, especially of the King's Counsel, who are, or at least behave themselves as if they were parties." That the Grand Juries did not look with favour upon, or approve this practice is clear; thus in 1796 on the trial of *The King v. Crossfield, Smith, Higgins and Le Maitre*, for High Treason, the Solicitor for the Treasury, acting for the Attorney-General, requested to be admitted during the examination of the witnesses on the Indictment. But the Grand Jury determined that no one, not a witness, could be present while they were making their inquest, and he was not admitted.

However frequently it may have been the practice formerly to take the evidence publicly before the Grand Jury, or tolerate the presence of the King's Counsel at the enquiry for the purpose of overawing or inducing Juries to find Bills in State prosecutions, it is clear that even then it was looked upon as an exception to the general practice, and that in all cases, without exception, the deliberations of the Grand Jury upon the evidence, however tendered, were invariably held in secret. In North's *Examen*, writing of the complaints that had been made in reference to the

Trial of Colledge, in 1681, there is the following :—" Now, to go on with this hedge libel ; ' and by a secret management shut up with the Grand Jury till they found the Bill.' A bailiff at the Grand Jury chamber door, to let in those that have business and none else, is a manager of secrets. Do but observe the hot and cold dealing. In Rous's case it was a privilege to be secret, and now it is management. The malicious and false insinuation is that the Grand Jury chamber, being free for all comers, as an open Court of Trials is, yet, in this case, it was shut up for management. O ! woeful law divine, that doth not know that place is always close, and not open to any that are not called, or have no business ; and that no defences being heard, only the prosecutors, and their witnesses attend to show that there is reason for the prosecution. And how could these men, as they are sworn, keep the King's secrets and their own, if they were not close. If all people might come in at such examinations, prisoners would have spies upon the testimony, which would be of ill consequence."

The privacy for which the Grand Jury so stoutly contended in the Earl of Shaftesbury's case may be taken to be completely assured now-a-days ; the case just mentioned being in Mr. Justice Christian's opinion the last instance of the public procedure. Even now a prosecutor may wait till the Grand Jury has assembled, and without notice to the accused, present a Bill of Indictment against him, without any preliminary enquiry before justices, except in the cases comprised within the Vexatious Indictments Acts, in which the consent of the Judge must be had, or the prosecutor have been bound over, or the accused committed. And even if the justice has refused to commit, the prosecutor may still insist on being bound over, and prefer his Indictment, subject to the payment of costs in the event of an acquittal (30 and 31 Vict., c. 35, sec. 2). This Bill is supported by secret evidence, and when found by the

Grand Jury the prosecutor may, at the end of the Sessions or Assizes, on payment of one shilling, obtain a certificate of the fact from the Clerk of Indictments, and upon the production of this before any justice within whose district the accused is supposed to be, obtain a warrant for his apprehension, when he must either go to prison or find bail for his appearance. Under such circumstances, it is undoubtedly open to a malicious prosecutor in this way to gratify his malice; and instances are not wanting in which advantage has been taken of the prejudices of Grand Jurors to prefer utterly groundless charges against individuals. The case of Mr. Blundell, of Ince, is a conspicuous example, where, taking advantage of the prejudices of the Grand Jurors in Lancashire against the Roman Catholics, a True Bill for murder was returned against him for causing the death of an old woman who, returning from market, was pitched out of her donkey-cart into a hole, in a road running through the Ince estate, which had been left insecurely fenced by some workmen, and thereby breaking her neck, and hastening the donkey's end. He was tried at Lancaster, before Baron Wood, who directed an acquittal on the opening, and immediately sent for the Grand Jury; but they had already been discharged, and so were not rebuked.

But though a prosecutor is entitled in most cases to prefer a Bill directly to the Grand Jury, it is but fair to state that the usual, and, in some cases, the compulsory, course is to initiate criminal proceedings by an application to, and subsequent examination before, a magistrate, at which the accused is present and entitled to be heard. The cardinal principle underlying the whole system of the Grand Jury was that the reputation and the personal liberty of the subject were of so much importance that neither of them ought to be jeopardised, unless and until the *fama publica* of the neighbourhood as represented by the Grand Jury raised

so violent a suspicion that a citizen had committed a crime, that he ought to be put on his trial. Until such presentment was made there was no legal warrant for his apprehension; but he was supposed to be ignorant of the fact that anything had been laid to his charge, and was in the full enjoyment of his liberty. Hence the absolute secrecy attending all the proceedings of the Grand Jury, which served the double purpose of screening men's reputations in the case of unfounded or trifling accusations, and of preventing the escape of the guilty by the acquisition of timely information, when the charges were deemed well founded. That this principle was openly violated by the State when it suited its purposes to do so is true. In the State prosecutions of the 17th century this iniquity was perpetrated on the specious, but utterly untenable ground, that the King may dispense with the secrecy of his counsel exacted by the Grand Juror's oath; which, though true enough so far as it goes, was not the less a flagrant violation of the other and fundamental principle on which the whole institution rests, viz., the preservation of the liberty and reputation of the subject. When once a True Bill had been found, the reasons for preserving secrecy were at an end; and forthwith a warrant was obtainable for the apprehension and incarceration of the accused, unless he could find bail to answer for his being forthcoming to take his trial. The evils attendant on such a state of things are thus enumerated by Bentham:—

“Without the fiat of a Grand Jury, for example, *caption* of the prisoner could not take place; and, except at the metropolis, no Grand Jury sat, but at the Assizes; and the Assizes were not held oftener than twice a year in any county, nor than once in some counties; nor in any county did they last more than two or three days; and, suppose the *caption* effected, *trial* could not take place till the next Assizes. What, as to offences, were the conse-

quences? Abundant as they were upon the continent, criminal offences, speaking by force, were in England in still superior abundance. In the time of Henry VI., Fortescue, then Chancellor, takes notice of this superiority, and makes it matter of boast. In the reign of Henry VIII. (as may be seen in Barrington's Observations on the Statutes), no fewer than 72,000 individuals suffered death by hanging—about 2,000 a year upon an average; this, out of a population not half so great as at present.

“Of the marriage of Queen Mary with Philip of Spain, one consequence was—the putting England, in this respect, upon a level with the continent. *Rome-bred* was the species of law by which the continent was then, as now, principally governed; and, under *Rome-bred* law, persons accused of crimes, might be apprehended *at all times*. By a statute of Philip and Mary, this power was given to Justices of Peace. In the case of a criminal suit, thus was caption, with *commitment* accelerated; still *trial* remained at an undiminished distance. But, how inadequate soever to the purpose of deterring others—commitments made in this mode would, of itself, so long as the incarceration continued, give effectual security as against future offences on the part of the same delinquent; for, while a man is *in gaol*, he cannot commit crime *out* of it, sagacity neither was nor is wanting to perceive this incontestable truth” (*Abridged Petition for Justice*, by Bentham).

The 34 Edward III, passed in 1360, conferred upon those assigned for the keeping of the peace, in every county of England, “power to restrain the offenders” and “to pursue, arrest, take, and chastise them according to their trespass or offence,” and to cause them to be imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement,” and “to take and arrest all those that they may find by Indict-

ment, *or by suspicion, and to put them in prison ;*" to take surety for good behaviour of all those not of good fame, "and also to hear and determine at the King's Suit all manner of felonies and trespasses done in the same county." In 1483, the 1 Richard III., c. 3, recites that "divers persons have been daily arrested and imprisoned for suspicion of felony, sometime of malice and sometime of slight suspicion, and so kept in prison without bail or mainprise, to their great vexation and trouble," and ordains that every Justice of Peace shall have power "by his discretion" to bail persons so arrested. Four years later the 3 Henry VII., c. 4, alleges that by colour of this Act of Richard III., "divers persons such as were not mainprizable, were oftentimes let to bail and mainprize by Justices of the Peace, against the due form of the law, whereby many murderers and felons escaped." It then repeals the power given to one Justice to bail, and ordains that the Justices or any two of them at the least, "whereof one to be of the quorum," may bail prisoners who are bailable, and that they shall certify the same to the next Sessions or Gaol Delivery; and the Sheriffs or other Keepers of Gaols shall certify at the Gaol Delivery the names of prisoners.

In 1554 the 1 and 2 Philip and Mary, c. 13 (the statute referred to by Bentham in the extract already given) provided that the Justices, before bailing any prisoner brought before them on a charge of manslaughter or felony "shall take the examination of the said prisoner, and information of those that bring him of the fact and circumstances thereof, and the same, or as much thereof as shall be material to prove the felony, shall put in writing" and certify it at the next General Gaol Delivery (Sec. 4.) Then the 2 and 3 Philip and Mary, c. 10, in reference to prisoners "suspected of manslaughter or felony and committed to ward and not bailed, in which case the examination of such prisoner, and of such as shall bring him, is as necessary,

or rather more than when such prisoner shall be let to bail," requires the Justices to take the examination before committing to ward, and empowers them to bind by recognizance all such as "declare anything material to prove the said manslaughter or felony" to appear at the next General Gaol Delivery to give evidence against the prisoner.

Thus has the power of the Justices of the Peace gradually extended itself until now their examinations are the means whereby the whole of the evidence is collected on which, subsequently, the accused is to be tried. This examination is usually, though *not necessarily*, a public one (Sec. 19 of the 11 and 12 Vict., c. 42, declaring that the Court where such examination is held, shall not be deemed an open Court, and that the Justice may order that no one—except the parties—shall be in it); the accused is entitled to be present, to cross-examine the witnesses, call evidence on his own behalf, and himself offer such explanations as he may think fit. According to the old practice the examination of the prisoner himself was also to be taken, and such was in fact done and such questions put to him as were thought necessary down to 1848; though now nothing can be asked of or said to him, except to administer the statutory caution, and a guilty man usually takes the hint so thoughtfully given him, and practices a "masterly inactivity." As the result of this public enquiry where all interests are duly represented; at which time the accused is in custody and any injury to reputation from the fact of a criminal charge having been made against him has already been effected; the magistrate may either discharge the accused if he think there is no case against him, or if he think there still remains enough to put him on his trial, or should he plead guilty but be an old offender, commit him. The Inquiry is then handed over to another tribunal specially designed to prevent all this publicity—The Grand Jury. Having heard all that was to be said, for or against him, before his face, the object

now is to find out what the same witnesses—or rather those only of them who have testified *against* him—will say behind his back; now those actuated by malice against him may indulge to their heart's content, while if disposed to befriend the accused they can speak out freely, without fear as to the result. It seems almost too much of a joke to be true, but it is. All this time the accused (who is really in gaol or bailed out) is supposed to be roaming free as air, utterly unconscious of the impending criminal charge (which has already been made and investigated in his presence), and the Grand Jury are sitting with closed doors in order that he may be saved the vexation incidental to a prosecution, if the evidence laid before them does not disclose sufficient cause for such. Of course, as the accused knows nothing of this Inquiry, he is not present at it, neither are any witnesses allowed to come before it on his behalf, but only the witnesses for the prosecution are examined there, even an *accomplice* cannot give evidence before them until he has been formally made a witness for the Crown by motion to the Court. With them the preliminary examination before the Justices goes for nothing—in theory they know nothing of it—and consequently they can usually make no use of, and have no knowledge of the depositions taken before them; it being an established rule that the Grand Jury ought never to be assisted by the depositions taken before the magistrates, except where they could be read before the Petty Jury (Denby's case, Leach, 580) *i.e.*, in the cases of the death of a witness or of his being so ill as to be unable to travel; and should a witness refuse to give evidence before the Grand Jury, they cannot use his deposition to enable them to find the Bill (*R. v. Rendle*, 11 Cox C.C., 299) unless his refusal or absence has been by procurement of the prisoner.

At the Gaol Delivery for the County of Surrey, held at Kingston in March, 1789, a person named Edwards was in

the Calendar of commitments on a charge of having burglariously entered Lambeth Palace, the residence of his Grace the Archbishop of Canterbury. A witness named Denby, who had given evidence before the magistrates, on being produced before the Grand Jury "prevaricated in such a manner as to induce a very strong suspicion that he had been tampered with on behalf of the prisoner." The Grand Jury therefore applied to the Court for the witness' deposition taken before the magistrate; but *Gould, J.* and *Hotham, B.* refused the application, on the ground that as the best evidence was the *vivâ voce* testimony of Denby himself, they could not abandon that, and resort to the secondary kind of evidence resulting from his written depositions—and a similar course had been pursued by *Gould, J.*, at a previous Essex Assizes (1 Leach, 514).

So secret are their whole proceedings supposed to be, that it was formerly deemed felony, for any of the Grand Jury to divulge the names of persons whom they were about to present.

In Georges' case in the reign of Edward III., 27 *Le Liver Des Assises and Plee's Del Corone*, Pl. 63, Georges was indicted in the King's Bench, for that he being one of the Indictors (*i.e.*, one of the Grand Inquest or Grand Jury) who had indicted certain persons of divers felonies, and being minded to discover the King's Counsel, had openly made known who certain of those parties were who had been indicted. And *Street* said that some of the Justices wished to hold this to be treason, nevertheless, he was arraigned simply for the felony, and was acquitted.

Coke, in his Third Institute says, that it is now agreed that such discovery is neither treason nor felony, "and the rather, for that no person ever died for such discovery."—"But certain it is, *that such disclosure is accompanied with perjury, and a great misprision to be punished by fine and imprisonment.*"

The Grand Jury being a secret tribunal, whose office is simply to frame accusations, and possessing no power, nor having cast on it the duty, of trying those against whom Bills are presented, is not of course bound by any of the rules of evidence applicable to the proceedings of tribunals for the trial of the guilt or innocence of the accused. They may, therefore, avail themselves of any sources of information that come within their reach, and act upon them or not, as they think fit; they may even read a paragraph from a newspaper (per Byles, J., *Reg. v. Bullard*, 12 Cox C.C., 353) look at the depositions of absent witnesses, without any proof that they were regularly taken (per Denman, J., *Reg. v. Currans*, 13 Cox C.C., 158) or trust to mere public rumour for the purpose of finding Bills. Such Indictments are perfectly good, and, according to the practice both of this country and of America, are not vitiated by the fact of the Grand Jury having received evidence that would be irrelevant or incompetent on the trial of the Indictment (*Hope v. The People*, in New York Court of Appeals, January, 1881). In the case of the notorious Dr. Dodd, who was tried at the Old Bailey in 1777 for forgery on the Earl of Chesterfield, Lewis Robertson had been charged as an accomplice with him in the forgery. Having presented a Bill against Dodd, the agents of the prosecutors obtained an order from the Clerk of Arraignment at the Old Bailey, directed to the Keeper of Newgate, to take Robertson before the Grand Jury, for the purpose of giving evidence in support of the Bill against Dodd; and a Bill having been found, it was objected to on the ground that the order was void, and also that the accomplice had not been admitted as a witness for the Crown. On consideration by the twelve Judges it was resolved, "that the necessity of some proper authority to carry a witness, who happens to be in custody, before the Grand Jury, to give evidence, regards the justification of the gaoler only; but that no

objection lies, upon that account, in the mouth of the party indicted; for in respect to him, the finding of the Bill is right and according to law." It had also been held by Lord Denman and Wightman, J., on the Northern Circuit, that an incorrect mode of swearing the witnesses to go before the Grand Jury, would not vitiate an Indictment, as the Grand Jury were at liberty to find a Bill upon their own knowledge merely, a ruling subsequently confirmed by Gurney, B., in *Reg. v. Russell*, Car. and Marsh, 247.

"The Grand Jury (wrote Bentham) is a judicatory not presided over by a professional and permanently existing official person, a Judge; but a company, a miscellaneous company of men, selected on the presumption of possessing a certain degree of opulence, in number from twelve to twenty-three. To pronounce a decision in favour of the demand, twelve, but not less than twelve, are sufficient. But here the information furnished is put upon the footing, and bears the character and denomination of evidence. Here, then, is a mass of evidence. What next becomes of it?—is it never acted upon? No, never. It is uniformly let drop and forgotten; all the use made of it is the enabling this majority, if such be their pleasure, to send the cause to be tried upon evidence not quite so sure of perishing, by a Judge or Jury in the same manner as an action as above is tried. And this in many cases with needless delay; as also in length various. . . . Now, in this preliminary operation, by which during a course of several days perhaps, from twelve to twenty-three persons have been occupied in the situation of Judges, besides an altogether unlimited number in the character of witnesses. What is the use? Answer: Absolutely none. What is the effect? To enable these twelve or twenty-three esquires, as they are called, to afford impunity without reproach to every malefactor to whom it suits their purpose to afford this encouragement to crime. Yes; such is the purpose, if not

of the creation of the institution, of the preservation of it; and for this purpose it is, if for any purpose at all, that the veil of secrecy, by means of the sanction of an oath—that veil which *originally* was thrown over it for other purposes—is preserved over it" (*Principles of Judicial Procedure*, chap. 29).

In a future number, we hope to consider the reasonableness of Bentham's strictures on the Grand Jury System, as applied to the present day.

JOHN KINGHORN.

Legal Obituary of the Quarter.

(ENGLAND, SCOTLAND, AND IRELAND.)

ADAM, His Excellency Right Hon. William Patrick, of Blair Adam, P.C., Governor of Madras, aged 58. Eldest son of the late Admiral Sir Charles Adam, of Blair Adam, K.C.B., a Lord of the Admiralty, M.P. for Clackmannan and Kinross, and Governor of Greenwich Hospital, and grandson of Right Hon. William Adam, Bencher of Lincoln's Inn. Mr. Adam, who was educated at Rugby, and at Trinity College, Cambridge (B.A., 1846), was D.L. and J.P. for Fifeshire and Kinrossshire; he was called to the Bar by the Hon. Society of the Inner Temple in 1849, and joined the Home Circuit. In 1850 he went to India, and from 1853 to 1858 was Private Secretary to Lord Elphinstone, Governor of Bombay. In 1859 he was returned to Parliament as M.P. (Liberal) for Clackmannan and Kinross-shires, and retained that seat until his appointment, at the close of last year, to the Governorship of Madras, in succession to the Duke of Buckingham. In 1865-6 Mr. Adam was a Lord of the Treasury, and again, 1868-73, and Chief Commissioner of Works, 1873-4. In 1873 he was made a Privy Councillor. In 1874 he undertook the duties of a "whip" to the Liberal party, in which position he gained wide esteem and regard on both sides of the House. At Madras the new Governor had already begun to win golden opinions, and his loss is deeply regretted.

May 24.

ALEXANDER, D. Carnegie, Esq., Law Agent and Notary Public, Selkirk, aged 61. Admitted 1849. *May 17.*

ANDREWS, George James, Esq., Solicitor, Dorchester, Clerk to the Justices for the division of Cerne, aged 67. Admitted 1834. *June 12.*

BARRATT, Alfred, M.A., and late Fellow of Brasenose College, Oxford, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 36. Called 1872. Formerly Scholar of Balliol, B.A., 1866, Mr. Barratt was elected Eldon Law Scholar in the University, 1870, having been distinguished by obtaining a First Class in five different Public Examinations, viz., Moderations, 1864, Classics and Mathematics, and in the Final Schools, *Lit. Hum.*, 1865, and Mathematics and Law and Modern History, 1866. Mr. Barratt was author of a work on "Physical Ethics" (1867), and in 1880 succeeded Mr. Dallin as Secretary to the Oxford University Commission. *May 18.*

BEALES, Edmond, M.A., Trin. Coll., Cambridge, and of the Middle Temple, Esq., Barrister-at-Law, Judge of County Courts, aged 77. Mr. Beales, who was son of Samuel Pickering Beales, Esq., of Newnham, Cambridge, graduated at Trinity College in 1825, and was called to the Bar, 1830. From 1862 to 1866 he was Revising Barrister for Middlesex. In 1868 he contested unsuccessfully the Tower Hamlets, and in 1870 was appointed County Court Judge for Circuit 35. *June 26.*

BLAKE, Edward, Esq., Solicitor (Irel.), of Riverview House, Ballinasloe. Admitted 1840. *July 13.*

CALLAGHAN, George, of the Middle Temple, Esq., Barrister-at-Law, aged 56. Called 1862. *June 17.*

CAMPBELL, William George, of the Middle Temple, Esq., Barrister-at-Law, aged 70. Called 1836. Appointed a Commissioner in Lunacy in 1845, and, on his resignation in 1875, an Honorary Commissioner. *June 13.*

CHERRY, Robert William, Esq., Solicitor (Irel.), of Waterford, aged 74. Admitted 1828. *May 29.*

CLARK, Charles, Esq., Q.C., and a Bencher of the Middle Temple, Official Reporter to the House of Lords. Mr. Charles Clark, who was well known in legal literature as one of the editors of *Clark and Finnely's Reports*, was called by the Hon. Society of the Middle Temple in 1830, and was elected a Bencher of his Inn in 1872, and took silk in 1874. He was Treasurer and a Vice-President of the Royal Society of Literature, and a Member of the Councils of the Social Science Association, and

the Association for the Reform and Codification of the Law of Nations. We were indebted to Mr. Clark's pen both for articles on "General Average," &c., and for reviews, in recent numbers of the *Law Magazine and Review*. *June 28.*

CLARKE, Sir Robert Bowcher, Kt. (1840), C.B. (1848), LL.B., formerly Chief Justice of Barbadoes and St. Lucia, aged 78. Eldest son of Robert Bowcher Clarke, Esq., of Eldridge, Barbadoes. Educated at Trinity College, Cambridge, where he took the degree of LL.B. in 1827. Called to the Bar by the Hon. Society of the Inner Temple, 1827. From 1837 to 1842 he was Solicitor-General and Speaker of the House of Assembly, Barbadoes. From 1842 to 1848 he was Chief Justice of that Colony, and from 1848 to 1859 also of St. Lucia. Knighted in 1840 for his services in connection with Emancipation. *May 9.*

COCKCROFT, Lonsdale Maving, Esq., Solicitor, Newcastle-on-Tyne, aged 54. Admitted 1847. *June 6.*

COLVIN, John, Esq., Solicitor, Inverness. Admitted 1824. *May 21.*

DE CRESPIGNY, Herbert Joseph CHAMPION-, of the Middle Temple, Esq., Barrister-at-Law, aged 75. Called 1832. Fifth son of Sir William Champion De Crespigny, 2nd Bart., M.P. for Southampton, by Lady Sarah Windsor, daughter of Other, fourth Earl of Plymouth, and sister of Henry, last Earl. The Champions, an old Norman House, obtained the lands and name of Crespigny by marriage in 1617, and came to England on the revocation of the Edict of Nantes. *July 1.*

CROOKSHANK, Arthur Chichester, Esq., Solicitor (Irel.) Admitted 1865. *May 25.*

DALTON, Harrison, of Lincoln's Inn, Esq., Barrister-at-Law, aged 56. Called 1849. *July 14.*

DIGBY, Arthur, Esq., Solicitor, aged 69. Admitted 1838. *May 17.*

DOBBIN, Leonard, Esq., Solicitor (Irel.), aged 92. Admitted 1810. Was for many years Clerk of the Peace and of the Crown for Co. Armagh. *May 5.*

EMMET, Charles Alexander, Esq., Solicitor, aged 52. Admitted 1850. *April 25.*

FOSTER, William, Esq., Solicitor, Liverpool, aged 83. Admitted 1826. *May 31.*

FRASER, George Patrick, Esq., Solicitor, aged 40. *May 2.*

FULFORD, Cecil Mark, B.A., of Emmanuel College, Cam-

bridge, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 40. Called 1867. Mr. Fulford, who was the last surviving son of Major Fulford, was grandson of Lieutenant-Colonel Fulford, of Fulford, the head of an old Devonshire family. He graduated as Junior Optime 1864. *May 8.*

GILL, William Coleman, Esq., Solicitor, Bath, aged 71. Admitted 1832.

GRAHAME, Thomas, Esq., W.S. (Scot.), aged 88. Admitted 1821. Mr. Grahame, who was formerly Joint-Keeper of the Register of Sasines for Co. Renfrew and for the Regalities of Glasgow and Paisley, was eldest and last surviving son of the late Archibald Grahame of Dalmarnock. *June 29.*

GREAVES, Charles Sprengel, Esq., of Mayfield, Co. Stafford, M.A., Q.C., and a Bencher of Lincoln's Inn, aged 79. Called by the Hon. Society 1827, Q.C. 1850. Mr. Greaves, who was eldest son of the late William Greaves, Esq., of Mayfield, M.D., by his first marriage with Anne Lydia, eldest daughter and co-heiress of Charles Greaves, Esq., of Ingleby, Co. Derby, was educated at Queen's College, Oxford, where he took his degree in 1823. He was D.L. and J.P. for Co. Stafford, and J.P. for Co. Derby, and was the representative of an ancient Derbyshire family. *June 3.*

GREENING, Richard James, of the Inner Temple, Esq., Barrister-at-Law, aged 79. Called 1830. *June 2.*

HALE, Joseph John Frost, of Somerton Hall, Suffolk, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 38. Called 1874. Eldest son of the late Joseph Eaton Frost, Esq., of Somerton Hall. *May 4.*

HART, Richard, Esq., Solicitor, Folkestone, Clerk to the Justices of the Borough, aged 73. Admitted 1829. *June 27.*

HATHERLEY, Right Hon. William Page, first Lord, P.C., D.C.L. (1851), LL.D. (1865), formerly Lord High Chancellor, aged 80. Lord Hatherley, to whose judicial eminence and high worth in private life, both the present Lord Chancellor and Earl Cairns bore unanimous testimony from different sides of the House, was the second son of Sir Matthew Wood, first Baronet, (cr. 1837), Alderman, and twice Lord Mayor of London, by the daughter of John Page, Esq., M.D., of Woodbridge, Suffolk. After studying at Winchester, which he left in consequence of declining to give any information respecting the great "Barring-out" of 1818, Mr. Wood went to Geneva, where he attended the Roman Law Classes of Pellegrino Rossi, the

distinguished Italian Jurist, then an exile, subsequently Minister of Pius IX. In 1819, Mr. Wood went up to Trinity College, Cambridge, where he gained a scholarship, graduating as 24th Wrangler in 1824, when he was elected Fellow. In 1827 he was called to the Bar by the Hon. Society of Lincoln's Inn. In 1845 he took silk. In 1847 he was returned to Parliament as M.P. (Liberal) for the City of Oxford, which he represented till made a Vice-Chancellor in 1853. In 1849 he was made Vice-Chancellor of the County Palatine of Lancaster; in 1851, Solicitor-General; in 1868, Lord Justice of Appeal, and Lord Chancellor and a Peer. He retired in 1872, on account of failing eye-sight. *July 10.*

HAYES, Edwin John, Esq., Solicitor, Town Clerk of Birmingham, aged 58. Admitted 1850. *May 30.*

HORWOOD, Alfred John, of the Middle Temple, Esq., Barrister-at-Law. Called 1844. *July 7.*

JAMES, Right Hon. Sir William Milbourne, Kt., LL.D., Lord Justice of Appeal, aged 73. The late Lord Justice, who was second son of Christopher James, Esq., of Swansea, was educated at the University of Glasgow, where he took the degree of M.A., and subsequently the Honorary Degree of LL.D. He was called to the Bar by the Hon. Society of Lincoln's Inn in 1831. In 1853 he became a Bencher of the Society, and in 1866, Treasurer. Appointed Q.C. in 1853, Mr. James was made a Vice-Chancellor in 1868, and received the honour of Knighthood in 1869. In 1870 he was raised to the dignity of a Privy Councillor and Lord Justice of Appeal. *June 7.*

JOHNSON, Henry Charles Ross, of the Inner Temple, Esq., Barrister-at-Law, at Mysore, India. Called 1861. *April 16.*

KANE, Thomas Henry, Esq., Solicitor (Irel.), aged 44. Admitted 1861. *May .*

KELLY, Edward, LL.B., Trin. Coll., Dublin, and of the King's Inns, Esq., Barrister-at-Law, aged 50. Called to the Irish Bar, 1855. Graduated B.A., at Trinity College, 1855. *May*

KINLOCH, Sir George, of Kinloch, first Bart., Advocate at the Scottish Bar, D.L. and J.P. for Perthshire, J.P. for Forfarshire, aged 80. Sir George, who was eldest son of George Kinloch, of Kinloch, Esq., M.P. for Dundee, descendant of an ancient Fifeshire family (the elder branch of which enjoyed a Scottish baronetcy, cr. 1685) subsequently settled on lands in

Perthshire, to which they transferred the name of Kinloch, was educated at the University of Edinburgh, and was called by the Faculty of Advocates in 1823. He was created a Baronet of the United Kingdom, under Mr. Gladstone's Premiership, in 1873. *June 17.*

LAMB, Samuel Blackman, Esq., Solicitor, aged 80. Admitted 1834. *April 30.*

LOVELL, George, of St. John's Coll., Cambridge, and of the Inner Temple, Esq., Barrister-at-Law, aged 54. Called 1853. *June 17.*

McKENZIE, Adam, Esq., Depute Sheriff-Clerk of Perthshire, Admitted 18 . *April 30.*

McLENNAN, John Ferguson, M.A., LL.B., Advocate at the Scottish Bar. Called by the Faculty of Advocates, 1857. Mr. McLennan was well known as the author of *Primitive Marriage*, and of various essays on Archaic Law and Custom. *June 16.*

MARSLAND, George, Esq., Solicitor, formerly of Manchester and Bolton, aged 55. *June 19.*

MATHEWS, Samuel Livingston, of the King's Inns, Esq., Barrister-at-Law, aged 44. Called to the Irish Bar, 1862. *May 22.*

MERCER, William Edward, Esq., Solicitor, Cavan (Irel.). Admitted 1879. Only son of the late William Mercer, Esq., of St. John's, Antigua, West Indies. *June 8.*

MILLETT, Hannibal Curnow, Esq., Solicitor, aged 62. Admitted 1842. *June 18.*

MILLS, William Hardman, Esq., Solicitor, Bicester, aged 44. Admitted 1859. *June 4.*

MOLONY, Michael, Esq., Solicitor (Irel.), of Dublin and Sligo. Admitted 1854. *May 25.*

NICHOLSON, Richard Ward, Esq., Solicitor, Town Clerk of Ripon, aged 57. Admitted 1853. *April 28.*

OUVRY, Frederic, Esq., Solicitor, V.P.S.A., aged 66. Admitted 1837. *June 26.*

PADDISON, Joseph, Esq., Solicitor, Melton Mowbray, aged 41. Admitted 1862. *May 9.*

PATERSON, Adam, Esq., LL.D., Member of the Faculty of Procurators, Glasgow, aged 70. Admitted 1840. *July 1.*

PROUT, John William, M.A., of Neasdon House, Middlesex, and of Lincoln's Inn, Esq., Barrister-at-law, aged 64. Called 1841. B.A., Wadham College, Oxford, 1839; M.A., 1841. *June 2.*

RAE, George, Esq., Solicitor, Liverpool, aged 44. Admitted 1858. *June 8.*

REA, John, Esq., Solicitor (Irel.). Admitted 1849. *May 16.*

REILY, Thomas W., of the King's Inns, Esq., Barrister-at-Law, aged 73. Called to the Irish Bar 1834. *June 20.*

SALE, Thomas, Esq., Solicitor, Town Clerk of Leominster, aged 76. Admitted 1829. *June 23.*

SLOPER, Samuel Elgar, of Winterton Hall, Hants, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 64. Called 1856. *July 1.*

SMITH, George Frederick, Esq., Solicitor, of Golden Square, London, aged 69. Admitted 1834. *July 10.*

STANSFIELD, John Fish, Esq., Solicitor, Accrington, aged 61. Admitted 1847. *June 23.*

STEEL, William Robertson, Member of the Faculty of Procurators, Glasgow. Admitted 1831. *May 2.*

SWANZY, John, Esq., Solicitor (Irel.), formerly of Dublin, Admitted 1849. *May 16.*

TIGHE, Robert, M.A., of Trinity Coll., Dublin, and of the King's Inns, Barrister-at-Law. Called to the Irish Bar, 1829. Formerly Judge of County Courts, and Chairman of Quarter Sessions, Co. Limerick. *June 15.*

USHER, John, Esq., Solicitor, Southampton, aged 74. *April 28.*

VERDON, Michael, Esq., Solicitor (Irel.), aged 39. Admitted 1863. *May 19.*

WALKER, James, Esq., W.S. (Scot.). Admitted 1824. *May 20.*

WALLER, Henry, of the Middle Temple, Esq., Barrister-at-law, aged 62. Called 1846. *May 11.*

WILSON, Roderick John, M.A., of Seacroft Hall, Yorkshire, and of the Inner Temple, Esq., Barrister-at-Law, aged 34. Called 1872. Eldest son, by the daughter of Roderick Macleod, Esq., of Cadboll, of John Wilson, Esq., of Seacroft Hall. Educated at Eton, and at Magdalen College, Oxford, B.A. 1870, 2nd class Modern History. *June 3.*

YOUNGHUSBAND, William Ogle Grey, of the Middle Temple, Esq., Barrister-at-Law, at Malta, aged 30. Called 1874. *May 16.*

Reviews of New Books.

A Practical Treatise on the Law of Marine Insurance. By RICHARD LOWNDES, Author of "The Law of General Average," &c. London: Stevens and Sons. 1881.

The practical treatise on the Law of Marine Insurance which Mr. Richard Lowndes has recently published will fully maintain the reputation which its learned author has already gained in the field of legal literature. To those who were familiar with the author's book on the "Law of General Average" the announcement of a treatise embracing in its wide scope the entire law of Marine Insurance was welcome as promising some pleasant reading about an interesting though intricate subject. Nor will such anticipations be disappointed by the book. Mr. Lowndes possesses the gift, as valuable as it is rare in legal text-books, of a lucid and pleasant literary style. He has the power of stating complicated facts in such clear, simple, and well-arranged narrative, that the attention is maintained without effort, and the impression retained without confusion. This is not a common, nor is it a small merit, especially in a book intended for mercantile as well as for legal readers. A well-expressed principle is so easy, the facts which qualify, if not also those which illustrate it, are so difficult, to remember, that it is an immense advantage to have a case so stated that its individual details as well as the general principles of law which were applied for its decision are together impressed on the reader.

Though possessing the merit of bringing into prominence, by succinct and clear statement, the facts and circumstances of important cases, Mr. Lowndes does not fail to trace, step by step, and with admirable firmness of grasp, the general principles of the subject. These are adverted to and explained, in detail and in summary, so that while the structure of parts is carefully noted, the entire conception is likewise vividly presented. The law of Marine Insurance is not, like some branches of English law, a mere conglomerate mass of decisions and dicta of judges, more or less familiar with the subject, upon cases brought to judicial notice by the accidents of commerce and litigation; it is a system based and reared on definite and consistent principles of law and commercial economy, and, as

such, Mr. Lowndes treats and explains it. Indeed the fault we should be disposed to find with the book as a legal text-book is that it deals too much with principles, and occasionally mixes up what is law with arguments about what ought to be law. This, however, is a mere fault of construction, and is often inevitable owing to the number of really important points, intimately connected with points actually decided, on which there is an absence of authority.

The book is so excellent a legal text-book, that one is apt, somewhat unfairly to the author, to criticize it exclusively as such. But the author explains in his preface that the primary aim of the book is to explain the law on the subject for the use of mercantile readers. "In these pages," he says, "I have endeavoured to put in few words, and in as plain language as I could use, such matters relating to the law of Marine Insurance as I thought a merchant or shipowner ought either to know or to have within easy reach . . . My main object has always been to write something which might be serviceable to a mercantile reader."

It would be impossible in this brief notice to illustrate by quotations the author's method of treating his subject, or to follow him into the discussion of any of the numerous interesting questions raised by him. On all these Mr. Lowndes will be found an instructive, on most a safe guide. There is indeed no book on the subject which so well supplies the needs of mercantile readers. In the short space of 217 pages the whole subject is concisely explained, in clear and plain language, with the practical sagacity of a business man but also with legal accuracy.

The subject is treated in its natural order, the seven chapters being devoted to the following matters:—Insurable Interest; Effecting of the Insurance; Causes which make a Policy void; Perils insured against; Total Loss; Particular Average; Other liabilities of Underwriters.

The chief value of the book to lawyers lies in its suggestiveness. This is probably due to Mr. Lowndes's wide practical experience as an average adjuster, and if so, the fact gives an additional value to the suggestions. They chiefly relate to questions which will some day doubtless arise, and in this book Mr. Lowndes has discussed many of these points with a wealth of argument which cannot fail to be very useful.

The most novel, and perhaps the most fruitful, of his sug-

gestions are those connected with the "sue and labour clause" (sec. 326 and onwards). The question is there discussed as to "whether the master of the ship is to be considered, for the purposes of the sue and labour clause, the servant or agent of the owner of the cargo, in incurring expenses either exclusively for the benefit of the cargo, or for its benefit or preservation conjointly with that of the ship." On this question Mr. Lowndes hardly ventures to express a definite opinion. There are difficulties, he says, in either view. The most recent authority is the case of *Whitworth v. Dixon*, 4 C.P.D. 378, in which Lindley, J. expressed a strong opinion in favour of the view, adopted in the law of the United States, that a shipowner can recover expenses incurred about the defence, safeguard or recovery of the ship, under the terms of the sue and labour clause, from his underwriters on ship and freight, leaving them to recover any contribution that may be due from the cargo.

A somewhat similar question is also discussed as to whether an undistributed loss by a sacrifice of cargo or ship's materials, claimed directly from the underwriter of the thing sacrificed, is claimable as particular average. This is an important as well as a difficult question, and Mr. Lowndes inclines to the opinion that such a loss is claimable under the sue and labour clause, and is not particular average. In fact, if Mr. Lowndes is right, the ancient sue and labour clause which is already encrusted with the practice and the decisions of centuries, is not yet fully comprehended, and contains the germs of many a lawsuit and many a peril for the much suffering underwriter.

The London (City) Tithes Act, 1879, and the other Tithe Acts Effecting the Commutation and Redemption of Tithes in the City of London. By HENRY BLOMFIELD BURNELL, B.A., LL.B., of Lincoln's Inn, Barrister-at-Law. Stevens and Sons. 1880.

The passing of the London (City) Tithes Act, 1879 (42 & 43 Vict., c. 176), is evidently the *fons et origo* of this book. That Statute is printed at length, and is carefully annotated. All the other Statutes relating to the subject are presented to the reader in an Appendix. Another Appendix contains the famous Decree of Henry VIII., which for upwards of three centuries regulated the payment of tithes in the City of London, with the exception of those parishes where recent legislation has introduced a desirable modification. This Decree, by the terms of

the Statute 37 Henry VIII., c. 12, should have been enrolled in Chancery, and although our less sophisticated ancestors appear never to have contested its validity on the ground of its non-enrolment, the legal talent of the 19th century insisted so frequently on this point that the ground of contention was at last removed by a decision of the House of Lords (*Macdougall v. Pourrier*, 2 Dow. and C. 135), which determined that enrolment must be presumed.

Mr. Burnell has prefaced his work with an interesting account of the origin of tithes. We are, however, unable to agree with him in accepting the year 1200 as the time when tithes were first made compulsory. Pope Adrian IV., Dugdale tells us (*Monast.* 827), ordered the monks of Boxley to pay parochial tithes as fully as such had been paid before they came into that parish, which was in 1144. Giannone, indeed, carries back their enforcement by Papal decree as far as the sixth century. In England, with which alone we are here concerned, Hallam doubts their general establishment as a source of parochial revenue till near the period of the Conquest. The legal obligation to pay tithes dates from A.D. 787, when the Legatine Councils held in England—which, being attended and confirmed by the Kings and Ealdormen, had the authority of Witenagemots—made it imperative (see Stubbs, *Const. Hist.* i., 228). The true importance of the year 1200 seems to be that it marks the extension of the tithe system from the prædial limits within which it had been confined to profit of every kind under the sun. Mr. Burnell's book is, as a whole, well conceived and well carried out, and is likely to prove a useful compendium for those interested in the Commutation and Redemption of Tithes in the City of London.

The Canada Law Journal, third Series, Vol. I., 1881. (Toronto: Willing & Williamson.)

The Canadian Law Times, Vol. I., 1881. (Toronto: Carswell & Co.)

We are glad to note signs of life in the legal literature of the Dominion. Our old contemporary, the *Canada Law Journal*, now in its twenty-seventh year, comes out in a fortnightly issue, with improved type and paper, commencing with the new year. While we congratulate old friends, we are none the less pleased to say a word of welcome to new faces, of whom we hope to see

more, in the shape of the *Canadian Law Times*. There can be no lack of matter, we apprehend, for legal criticism and suggestion, seeing that a Dominion Judicature Act has just been introduced. In proof of this, we note an elaborate paper on the Law of Allegiance, by Mr. Hodgins, Q.C., and other articles which promise well for the literary and juridical interest of the *Canadian Law Times*.

The Marriage Law of Ireland. With an Introduction and Notes. By W. HARRIS FALOO, Barrister-at-Law, sometime Professor of Constitutional and Criminal Law, King's Inns. (Dublin: Hodges, Figgis and Co. 1881.)

Mr. Faloon, whose recent contribution to our own pages will be fresh in the memory of our readers, has lately published a very useful and timely book on a subject of great importance, to which we have, on more than one occasion, devoted considerable space in this *Review*. By way of preface, besides his Introduction proper, Mr. Faloon describes the legal machinery for marriage in the Irish Episcopal Church, among Roman Catholics and Presbyterians, Quakers and Jews, as well as before a Registrar at his office. The brief pages headed "England and Scotland" are intended simply as a guide where the marriage is "mixed," in the sense of one of the parties being Irish and the other English or Scotch. The marriages ordinarily known as "mixed" have often caused complications, which are set forth under the title "Evidence—Bigamy." We do not feel quite sure that Mr. Faloon's statement of the requirements of the marriage law "in England and Ireland," on page 2 of the Introduction, is quite clear. The presence of the Registrar is required in England at a marriage by a Non-conformist minister, for this is one of the grievances whereof redress is sought in the Bill introduced by Mr. Briggs and Mr. Borlase. That there is a substantive grievance we are far from denying, since the Registrar has not the gift of ubiquity, and marriages are often most inconveniently delayed by his unavoidable absence. But to remedy this, as proposed by Mr. Briggs, by casting the *onus* of registration on the parties, would be, in nine cases out of ten, to destroy all chance of registration—a result doubtless not desired by the author of the Bill. Mr. Faloon's enunciation of what seems to him to be the present legal position in regard to Roman Catholic marriages in Ireland

(Introduction, p. 9) is one of very great gravity. If our author is right in believing that they may at this moment, "so far as the State is concerned," be celebrated "privately or publicly, at any time or place, and in any form or manner the celebrating priest may think proper, without banns, licence, notice, residence, or consent," he has, in our opinion, shown weighty cause for the speedy reform of such a condition of *Anomia*. We commend Mr. Faloon's book to the careful consideration of all who are interested in having a clear understanding of the marriage laws of Ireland, whether as such, or as a branch of the wider question of the marriage laws of the United Kingdom.

A Digest of the Law of Libel and Slander. By W. BLAKE ODGERS, M.A., LL.D., of the Middle Temple, Barrister-at-Law, late Scholar and Law Student of Trinity Hall, Cambridge. Stevens and Sons. 1881.

A Treatise on the Law concerning Libel and Slander. By JOHN C. H. FLOOD, of the Middle Temple, Barrister-at-Law. W. Maxwell and Son. 1880.

These two works, different alike in size and in the purpose each is intended to serve, have this in common that they deal with a subject always of practical interest.

Mr. Odgers has, he tells us, taken several years over the composition of his Digest. It generally does take some time to produce a good book, and more time than usual is needed to produce a good law-book. The result, in the case of Mr. Odgers, amply justifies the time he has devoted to his subject. He has produced a book which gives a generally clear view of the existing state of the law on a frequently intricate and perplexing topic, and which treats a well-worn subject with freshness and originality. These are features of no small value, and in an age of much book production, when it is becoming increasingly difficult to make a mark in legal literature, the Digest now before us ought to make its mark. The Book is written in Digest fashion, and is fairly entitled to the name which has been given it. The propositions purporting to state the law are, of course, drawn from decided cases, and a selection of judicial decisions is given in support of each group of propositions. In some of the older cases these decisions are very quaint, and we should incline to think of doubtful authority

now-a-days. This is a difficulty which Mr. Odgers has himself felt, but from which he apparently saw no escape. We confess to a greater doubt than our author himself seems to have felt in regard to leprosy. Would *Taylor v. Perkins* be followed now, if a man were so much of a Monkbarns as to say to another "thou art a leprous knave?" The mediæval horror of that not very clearly ascertained form of disease, which appears to have spread over Western Europe in the wake of the returning Crusaders, was doubtless still fresh in men's minds *t. Jac. I.* What relation it really bore to the scriptural disease whose name it assumed, is, so far as we have been able to ascertain, still a matter of dispute. On the whole, therefore, we should certainly not expect to find the cause of action in *Taylor v. Perkins* sustained in the nineteenth century. The Precedents with which Mr. Odgers has furnished his readers are in several cases drawn from causes *célèbres* of former days, such as *R. v. Newman* (the Achilli case), *R. v. Horne*, &c. The Interrogatories printed show what has been struck out, as well as what has been allowed, a point of no slight importance.

Mr. Flood writes principally with a view to the lay public, who certainly need all the information they can get on such a subject, and who, perhaps, would not be so ready to rush into Court if they took a little thought before rather than after the event. We do not think the extracts from the Pentateuch throw much light on the English Law of Libel, and we must demur to the depreciatory view which Mr. Flood takes of Norman juridical science. As a matter of fact, there can be no doubt that the first Norman occupant of the See of Canterbury was far more of a jurist than any of his immediate predecessors; more so, perhaps, than any since Theodore of Tarsus. And the subtleties of the many subtle technicalities of Feudal Law characterise the whole of the attitude of William the Conqueror no less towards Harold and England than towards the Roman Curia, itself the centre of Canon Law. Mr. Flood deserves the thanks of his readers for a feature in the list of reports referred to in his book, to which he has added the periods comprised. This will be found often to throw the light of contemporary history upon a particular decision, and may even afford ground for a side argument to the practitioner, as adding to, or detracting from, the value of the judgment as a precedent. In a future edition Mr. Flood should correct "*Lappenburg*" into *Lappenberg*, both in his citation, p. 14, and in his list of authorities.

We observe that in the list he professes to follow Bracton, ed. 1569, but in his text he cites the edition of 1640. It would be more convenient to cite uniformly the edition of Sir Travers Twiss, of which Vol. IV. is now in the Press.

The Scientific Study of the Hindu Law. By J. H. NELSON, Esq., M.A., late Fellow of King's College, Cambridge, of the Middle Temple, Barrister-at-Law, and a District Judge, Madras. London: C. Kegan Paul & Co. Madras: Higginbotham & Co. 1881.

Mr. Nelson has for some years been known as an earnest advocate of the necessity for a thorough reform, not to say revolution, in the existing theory and practice of our Courts in matters of Hindoo Law, especially as affecting Southern India. In the pages of our able Madras contemporary, the *Indian Jurist*, where the work now before us originally appeared, as well as in the *Journal* of the Royal Asiatic Society, Mr. Nelson has not ceased to utter his protest against a system which applies as law that which he is convinced is not law, and perhaps never was, for the varied masses of people, of differing origin, inhabiting what is now the Madras Presidency. Not only does he, in the present volume, attack the supposed paramount authority of the *Mitakshara*, but he strikes at the root of the so-called *Code of Manu* itself. We must avow our belief that there is a great deal to be said alike against *Mitakshara* and *Manu*. *Manu* is, indeed, constantly cropping up. It is confidently cited in Court, as is shown by a recent number of the *Indian Jurist* (v. p. 306), in a Calcutta High Court case, *Jogendronundini Dossee v. Hurry Doss Ghose*, before Garth, C.J., and Pontifex, J., where Bonnerjee, for the wife, cited *Manu*, ch. v., to show "the position of the Hindu wife," and similarly, ch. ix., "the husband's duties." We may take occasion to remark, in illustration of the difficulties attending on Hindoo Law, that, in the same case, the opinion of our valued contributor, Mr. Justice Markby, now Reader in Indian Law, Oxford, was cited against the existence of restitution of conjugal rights in Hindoo Law, as well as an opinion, *contra*, of the Bombay High Court. It is proverbially hard to decide, where doctors disagree. The historical and ethnical arguments against the prevalence of the supposed "paramount authority" in Southern India, as marshalled by Mr. Nelson, appear to us

very strong. We incline to think, with M. Barth, they are unanswerable. If it be asked, as naturally it will be, what then is the paramount authority there, our author's reply will no doubt be to many highly disconcerting. For, practically, his reply is that none such exists. It would therefore have to be provided, and the *modus operandi* of this provision, through a mixed Commission, as suggested by Mr. Nelson, could not fail to be highly instructive. Whatever principles might be found to be held in common by all the races of Southern India would form the *Jus Naturale et Gentium* of the Madras Presidency. The customs observed by the numerically predominant non-Brahmanic and non-Aryan inhabitants would then, many of them for the first time, obtain judicial recognition. Some such have already been so recognised, why not others? Doubtless these customs would, in not a few cases, be obnoxious to Western conceptions of Law and Morals; but not more so, it may well be contended, than many customs which, on the authority of possibly isolated, often conflicting, texts of speculative writers of uncertain date and still more uncertain prevalence, are at the present day imposed upon persons who laugh at Brahmans and deride the *Vedas*. That the *Code of Manu*, so called, ever was Law proper, we have ourselves long disbelieved. That the Brahmans should have wished to make us accept it as Law, we can readily understand. We are grateful to Mr. Nelson for his able and interesting work, and wish him success in his battle for the "Scientific Study of Hindû Law,"

A Manual of Practice of the Supreme Court of Judicature in the Queen's Bench and Chancery Divisions. Second Edition. By JOHN INDERMAUR, Solicitor. Stevens & Haynes. 1881.

The recent consolidation of the three Common Law Divisions into one "Queen's Bench Division," and the abolition of the ancient and historically interesting but practically superfluous offices of the Lord Chief Justice of the Common Pleas, and Lord Chief Baron of the Exchequer, afforded an opportune occasion for the publication of a second edition of Mr. Indermaur's excellent manual of Practice. A new edition had moreover for some time been called for in consequence of the alterations rendered necessary by the various new rules, more especially those of April, 1880, and the many decisions on points

of practice which had been given during the preceding three years. The author has thoroughly and carefully revised the work adding a chapter on Arbitration and also some additional forms in the Appendix. Altogether about 60 pages have been added to the book ; but without impairing the conciseness which was a commendable feature of the first issue. Both Articled Clerks and Solicitors will find the present edition a convenient authority for the purpose of ordinary practice.

The Law of Fixtures, in the principal relation of Landlord and Tenant, and in all the other or general relations. By ARCHIBALD BROWN, M.A. and B.C.L., of the Middle Temple, Esq., Barrister-at-Law. Fourth Edition. Stevens & Haynes. 1881.

We are glad to see that a fourth edition has been called for of Mr. Archibald Brown's able treatise on the somewhat difficult branch of law which deals with the Law of Fixtures. His statements of the law are eminently clear and concise, and the arrangement, which has been improved in the present edition, leaves little to be desired. The changes in the law, both statutory and case-made, which have occurred since the issue of the last edition, in 1875, have been carefully incorporated, and the whole of the work has been subjected to a thorough revision. An additional feature is the inclusion of the law regarding ecclesiastical fixtures or dilapidations. The numerous references to the leading American decisions render the present edition equally available for practitioners on both sides of the Atlantic.

SMALLER BOOKS AND PAMPHLETS.

Mr. M. D. Chalmers, M.A., of the Inner Temple, addresses to Mr. Baron Pollock a Letter on *The Cost of Litigation, with Suggestions for the Amendment of the Procedure of the Supreme Court* (Stevens and Sons, 1880), in which, we observe, he takes some ideas from the Indian Code of Civil Procedure. There are, probably, not a few points upon which, making due allowance for local diversities, our law reformers might not glean useful suggestions from our Indian Codes. Mr. Chalmers's views tend in the direction of a diminution of Jury trials, which he considers an expensive "luxury" to the litigant. He also favours the One-Judge System, about the merits of which there is just now no small controversy. The value of his pamphlet is brought out in one of the articles in our February issue.

A collection of *Latin Maxims literally translated* (Stevens & Haynes, 1881), will be found a useful companion for the Articled Clerk in the course of his reading for examination. The author, who is apparently a Solicitor, has selected those maxims which most frequently occur in the received examination text-books, and besides translating them, has given short explanatory notes, containing reference to the leading cases involved. The student would do well to commit the whole of the 144 maxims to memory, and subsequently to study their full bearing, and more especially the many exceptions to them, in the larger work of Broom.

A Digest of the Law of Light, by Mr. E. Stanley Roscoe, Barrister-at law (Reeves and Turner, 1881), supplies a compact and scientifically arranged *exposé* of a branch of the law by no means free from difficulties. The statements are given in numbered paragraphs, illustrated by examples drawn from decided cases, and occasionally supplemented by concise notes. At the end is a brief Appendix of Statutes and Forms. Not only lawyers, but urban landlords, architects, and builders, will find this little work a very useful *vade mecum*.

In an *Essay on the Law of Pleading by way of claim for Alternative Relief* (Butterworth, 1881), Mr. A. Gordon Langley, of Lincoln's Inn, has published a learned and well-reasoned tractate on an important but somewhat obscure point of pleading, in which the authorities, both prior and subsequent to the Judicature Acts and Orders, are digested and classified. The practitioner will find it worthy of attentive perusal.

Mr. W. Shirley Shirley, M.A., of the North-Eastern Circuit, assisted by Mr. C. M. Atkinson, M.A., LL.M., of the same Circuit, in a *Sketch of the Criminal Law* (Stevens and Sons, 1880), plunges boldly into the "*Mare Magnum*" of criminal law, which he maps out for the student who shall navigate in his wake in the brief space of a text of 128 pages. To arrive at his end, he is obliged to use great compression. We do not think that it is possible fairly to condense so large and difficult a subject, for instance, as the Law of Libel, into the small compass which Mr. Shirley, of necessity, allots it. The headings of the various paragraphs, however, are well brought out by the use of bold type, so that the key-note can scarcely fail to catch the eye.

* * * Pressure on our space compels us to postpone several Reviews, as well as the usual *Select Cases and Quarterly Notes*.

THE LAW MAGAZINE AND REVIEW.

No. CCXLII.—NOVEMBER, 1881.

I.—ON JURISPRUDENCE AND THE AMENDMENT OF THE LAW.*

IN the Department over which I have the honour to preside are discussed the subjects of Jurisprudence and Amendment of the Law. If by the term "Jurisprudence" be meant what I find attributed in one of the definitions given of it, "the science of what is just and unjust, or of the laws, rights, customs, statutes, necessary for the doing of justice," it must be admitted that the field of our inquiry is of an extent limited only by that of the relations which human beings are capable of forming. Under this comprehensive expression would be included the consideration of these relations, not only as they ought to affect the conduct of men individually towards each other, but also the rules governing them in a corporate or national capacity during their mutual dealings and intercourse.

Extensive, however, as is the range of inquiry, and multiplied as are the objects of investigation in this science, we shall find all pervaded by certain general principles, having their origin in the dictates of our moral nature, and common to all times and countries. Often much obscured,

* The Address delivered before The Jurisprudence Department of the Social Science Congress, Dublin, Oct. 4th, 1881. By The Right Honourable J. T. Ball, D.C.L., LL.D., formerly Lord High Chancellor of Ireland: Revised, with additions, by the Author.

often modified, until we scarcely recognise them, still through every variety of the social system a patient investigation will discover their presence. To borrow the striking illustration with which Lord Bacon has so admirably illustrated this truth—all civil laws are derived but as streams from certain fountains of Justice which exist in nature, and like as waters do take tinctures and tastes from the soils through which they run—so do civil laws vary according to the regions and governments where they are planted, though they proceed from the same sources.

I merely allude to this subject, for to pursue it, or present any critical analysis of the abstract theories which jurists have connected therewith, would lead too far. Such inquiries are more suited for the learned leisure of Universities and Colleges, than for assemblies like the present, drawn from the occupations of active life. And fortunately they are not needed in order to solve the practical questions more immediately incumbent. Not that in dealing with these, reference can be avoided to the principles which ought to guide, or that it is not in agreement with them must be found the test to which legislation is to be submitted; but that, founded in our nature, they present themselves and assert their own authority, independent of any process of reasoning, and superior to it. The family, the commonwealth, the great society of mankind, rest upon the same obligation to what is just, and are affected by the same natural desire to advance the general welfare; and a policy which disregards or departs from these influences is not merely unsound, but to use an expression of our great countryman Edmund Burke, lies under the suspicion of being no policy at all.

We may therefore more profitably occupy the time at our disposal by passing from abstract principles, respecting which such a general agreement may be assumed as will

enable reference to them when discussing measures of a practical character, and proceed to the second branch of the subjects allotted us—namely, the amendment of our positive law. And, approaching this subject, we may with gratification observe that since the first foundation of the Society most of the important changes introduced by Parliament into our laws and social system were previously debated at its annual meetings; important statistical information connected with them supplied by its researches, and the arguments for and against them marshalled with skill and judgment. And if this has been the case in the past, how much more likely is it to occur in the future? Formerly questions of this kind were made known to public notice, and specific propositions for alteration of the laws advocated through the medium of Parliamentary debates initiated by private members. It was thus that reforms in Criminal and Real Property Law were originally introduced, and for successive years discussed. But now the extraordinary demands upon the time of the House of Commons, owing to its much increased business, and a more protracted and prolix mode of transacting it, have rendered it exceedingly difficult, if not wholly impracticable, for private members to bring forward measures not adopted by the Government, or when they do, to obtain for them the attention of an assembly which, even without them, has been already over-worked and wearied. No more effectual substitute for the opportunities thus lost seems open than discussion in societies like the present, where expression may, with perfect freedom, be given to every variety of opinion.

These remarks properly lead to the business which has been specially allotted for this department in the programme issued by the Committee of Management. By them it has been subdivided into two sections—one designated International and Municipal Law, the other Repression of

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Crime. As there is a separate Chairman for the second Section, I am more particularly connected with the first, and shall therefore direct your attention to the subjects prescribed for its consideration, and more particularly to certain special questions which have been set down for discussion ; proposing, however, only to make some brief observations preliminary to the more ample treatment they may be expected to receive from the Members who have undertaken to bring them forward.

These special questions I shall now read :—

1. Is it desirable that there should be Periodical Meetings of Representatives of various States, to which all disputed International Questions should be referred ?

2. Should the Procedure on Private Bill Legislation in reference to Local Improvements be amended so as to facilitate inquiries on the spot by Parliamentary Committees or otherwise ?

3. Are any, and what, Alterations in the Jury Laws desirable ?

Of late years, the proposition involved in the first question has attracted much attention ; but it is itself of by no means recent origin. In the celebrated treatise of Grotius, which first reduced the law of nations to a system, it may be found. "It would be useful," says this great master of the science of international law, "and indeed it would be almost necessary, that certain congresses of Christian powers should be held, in which controversies that arise among some of them may be decided by others who are not interested ; and in which measures may be taken to compel the parties to accept peace on equitable terms."* When we are asked if such Congresses are desirable, I own that I am unable to see the propriety of any answer other than an affirmative. War must be admitted to be an evil which

* *De Jure Belli* (Ed. Whewell. Cantab., 1853), Lib. II., Cap. XXIII., § VIII., 4.

brings so many calamities in its train, that every means consistent with what is right and just should be tried to avert it. *Nullum bellum justum nisi necessarium*, is the voice of reason and philosophy; and it can scarcely be doubted that if the frivolous or inadequate grounds—often mere pretexts—upon which, in a very large number of instances, hostilities have arisen between nations had been submitted to arbitration, they must have been overruled. The proposal is more likely to be objected to upon the ground that there is little probability of its being carried into effect; and no doubt the experience of the past is not encouraging either as to this or other suggestions made for the preservation of international peace. Without travelling beyond the records of the last thirty years, we shall, upon examining the causes of the wars that during this period have been waged, even in the most civilized portions of the globe, find reason to lament the little progress which correct opinions in respect of the duties of nations towards each other have made. But however true this may be, it not the less is our duty to refuse to yield to discouraging influences; for nowhere, more than in what relates to the social system of the world, are we bound to abstain from auguries of ill; since prophecies of this character, inducing general apathy, tend to fulfil themselves. It is possible to mitigate what cannot be overcome. The problem may not be solved; but every approximation to its solution is a distinct and solid gain. There are, too, of late, indications that the time is not unfavourable for such exertions. Most of the Universities, whether European or American, have for some time introduced into their course of study International Law. The wise and just principles which this science inculcates must thus gradually come to be diffused through the classes who receive their education in these institutions, and so ultimately to affect the conduct of the respective governments which represent them. Nor do I

know that a Society like the present can be employed with greater advantage to the public interest than in aiding by its discussions the still wider dissemination of these principles ; in this manner contributing to form that enlightened public opinion, upon which, more than any other means, we may rely to render hostilities between nations more rare, more brief, and if unhappily not to be avoided, attended with very diminished suffering.

The second question for debate concerns, in a particular degree this country. Distance from the place where Parliament holds its inquiries necessarily increases the attendant expenses. In the able pamphlet of Mr. Bagot (Secretary of the Chamber of Commerce in Dublin) upon Private Bill legislation, instances are given of quite unreasonably large sums obliged to be expended in order to pass Irish Private Bills. It is not probable that Parliament would altogether surrender its control over the legislation affecting such important and extensive interests as in many instances form the subject of Private Bills ; and if it were willing to do so, the expediency of such a measure may well be doubted, when we reflect upon the influences which might sway merely local authorities. It is not only possible, but it has actually occurred, that the work contemplated may affect national interests, and involve Imperial considerations, and so deserve no less a tribunal for determining the questions arising than the supreme legislative authority. But the preservation of control is consistent with much improvement in the system, with aiding, not removing, the superintendence of Parliament. A private bill affecting a compromise of individual rights is referred to the Judges ; in some similar way other references might be made to authorities that would form appropriate assistants. To use the words of Mr. Mill—"the authority which is most conversant with principle should be supreme over principles, while that which is most competent in

details should have the details left to it." How this—the union of central control with local enquiry—may best be effected, is the problem which will have to be solved in your discussions. Probably when the matter is minutely examined, there will be found a range of subjects, of less magnitude than those I have alluded to, over which central control is not so much needed, and as to which Parliament might safely delegate jurisdiction. An opinion to this effect has been expressed by the present Speaker of the House of Commons, in a speech made this year at a dinner of the Chairman of the Metropolitan Board of Works. When speaking of the overwork of the House of Commons, he observed, that some relief might be afforded by handing over to local authorities a portion of the business, which might be better discharged by them than by the Imperial Parliament.

The third subject now proposed for discussion is the Jury System. Trial by Jury at present exists in England, Ireland, and Scotland. The qualifications of jurors differ in the three countries; so also do the regulations under which the jurors are called for any particular trial. In the three, certain civil and all criminal cases not disposed of summarily, are heard before a Judge and jury. In England and Ireland, in order to a verdict, there must be unanimity of opinion among the jury: if there be disagreement, the trial becomes abortive. In Scotland unanimity is not required: it is sufficient if, after a prescribed period of deliberation, a certain proportion concur. In England and Ireland the verdict must be either "guilty" or "not guilty." In Scotland it may be either "guilty," or "not guilty," or "not proven." A prisoner after a verdict cannot be a second time tried for the same offence. In France criminals are tried before juries. A singular provision of the French law upon this subject is mentioned by Mr. Grote in his *History of Greece* (IV., p. 127). According to him, if seven

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jurors are for conviction and five for acquittal, the votes of the Judges are counted in, thus practically casting on them the ultimate decision.*

The questions which arise in connexion with the Jury System as existing in England and Ireland seem to be principally in reference to the qualification of jurors, and the obligation of unanimity in order to a verdict. How far beyond the effect of a fixed qualification in limiting the number and securing the requisite fitness for discharge of their duty selection may be applied; and whether in criminal cases there should not be some mode of correcting erroneous conclusions of the jury, as in civil there is from the power vested in the Court of directing new trials, are also matters respecting which difference of opinion prevails amongst jurists.

With respect to the qualification, it may without much difficulty be laid down that it should be such as shall tend to secure (for absolute security is not attainable) that the education of those empanelled to decide upon the facts and inferences to be submitted shall be sufficient to enable them adequately to understand and appreciate the evidence and the questions arising upon it. The mode in which, under existing laws, this is sought to be effected is by requiring the juror to possess a certain amount of property, and by dividing the panel into two classes, known as petty and special jurors—the former for hearing the more simple and unimportant, and the latter the larger and more complicated cases. Unless the State were to institute an educational test, such as passing the examination of some prescribed institutions, a pecuniary qualification seems as well fitted to accomplish the object as any other.

* Mr. Grote's citation, however, does not appear to be applicable to existing French Procedure. It seems to refer to a past legislation, under which when a verdict on a criminal trial was brought in by a bare majority, the Judges were to confer with each other on the question of fact. By the law of 9 June, 1853, still in force, a bare majority suffices. Lefort, *Droit Criminel*, Paris, 1877, p. 405.

With respect to unanimity, there can be no question that it enforces careful examination and sifting of the evidence, and tends to give weight to the decision, and to produce acquiescence in it. If disagreement is revealed, the defeated party may be expected to cite the favourable suffrages of the minority, and to insist that their authority is equal to that of the majority; while the external public, ignorant of the grounds upon which the respective parties have formed their different opinions, will most probably consider that the result is due to accident as much as to reflection, and regard the whole proceeding as infected with doubt and uncertainty. In criminal cases the disclosure of the disagreement would place the members favourable to conviction in an invidious position; and this would particularly apply to trials of political offences. It would also, in the instances where the result was conviction, embarrass the Judge when awarding punishment, and the Executive Government afterwards in resisting applications for its remission. These considerations seem decisive, if not in favour of absolute unanimity, certainly of requiring a considerable preponderance in order to authorise a verdict to be received, so that the decision would have to encounter the dissent of merely a trifling minority.

The propositions for empanelling a jury by selection, and subjecting the verdict in criminal cases to review by a judicial tribunal, have their origin in the general experience that during periods of popular excitement, and in localities where violent prepossessions operate extensively, juries cannot be depended upon to act independently of the prevailing influences. I know not that a better instance of this can be given than the verdicts which, under the delusion of the Popish plot, were returned upon the evidence of such witnesses as Titus Oates and his accomplices. Whether any of the alterations suggested in the jury system, or the machinery by which it is worked, would

obviate the evil complained of, or whether it is not in some degree inherent in the nature of a tribunal composed of persons who share the prevalent sympathies or antipathies of the time, it is for you in your debates, rather than for me in these preliminary and necessarily incomplete observations, to inquire. I may, however, observe that exceptional periods can scarcely be adequately dealt with by previous legislation. It is impossible to foresee what circumstances may in the future exist. Forces entirely out of present calculation may disturb the social system. They may even be of such a character that the community has no resource, except in a temporary suspension of privileges which, abused in their exercise, cannot otherwise ultimately be preserved.

I have now referred to the topics set down upon our paper. Recent legislation may well suggest allusion to some others. There can be no doubt that in connexion with land, and the tenure of land in Ireland, new interests have been created. The occupying tenantry have been secured in their farms on favourable terms, and are to be assisted in purchasing them. When the provisions of the measures which have accomplished these social changes come to be known, it may not unreasonably be expected that effect will be readily given to them. So far as they facilitate the elevation of the tenant to the condition of a proprietor, approval seems general; and justly, for in this way, in addition to the benefit to the individual from his improved condition, will result to the State the advantage of binding increased numbers by the tie of self-interest to support the institutions which protect property. I, however, looking in these observations rather to the future than the past, desire to point out some other consequences. It may be expected that the interests thus acquired will become the subject of frequent dealings in the way of loans, sales, and testamentary dispositions. In

order to facilitate these dealings, and lessen the expense of administering estates of limited value, an equity jurisdiction has, by a most useful measure, been conferred upon the Irish County Courts, with an easy and cheap appeal to the Lord Chancellor. Statutes have also been passed which tend to simplify the acquisition and confirmation of title. Still in transactions of small amount, the costs connected with conveyancing press with disproportionate severity. In the case of loans this is particularly objectionable. Various suggestions have been made, and particularly in some papers read before the Dublin Statistical Society, with a view to introduce greater facility of transfer and incumbrance. Without now entering upon the questions which have been thus raised and which probably can be better and more satisfactorily answered when there has been experience of the working of the new legislation, and of the tribunals constituted under its provisions, I would desire to commend the consideration of the subject to this Society, in the hope that, if not now, it may at some future meeting be fully discussed.

I would, in conclusion, remind you, that the gradual and progressive growth and expansion of political institutions are to be expected ; that besides this cause of alteration in their frame, variation in the tone of opinion among the classes influencing the course of legislation is necessarily continually occurring. Laws, then, which are but the representatives of institutions and opinions, must also be subject to change ; safe, only when it neither outruns nor falls short of the exigency of the period ; imitating, according to the prescription of Bacon, the example of the chief innovator, Time, "which innovateth greatly, but quietly, and by degrees scarce to be perceived."

II.—OUGHT GRAND JURIES TO BE ABOLISHED?

In a recent Article in this *Review* (No. CCXLI., August, 1881), we traced the historical growth of the Grand Jury System and of the system of magisterial investigation into criminal charges which has grown up by its side. We also indicated pretty clearly that, in our opinion, the time has now arrived when the latter system ought entirely to supersede the former. In continuation of our previous line of thought, we shall now enter in more detail upon the consideration of the evils attendant upon the existing complex arrangements.

With the complete immunity assured to them, the temptation to accused persons to endeavour to "square" charges, and to prosecutors and witnesses who were open to such advances as might be made for that purpose, to give friendly, or sympathetic evidence before Grand Juries, was not likely to be always resisted; more especially as those august bodies were comparatively helpless in the matter. True it is that the witnesses give their testimony on oath; that till the year 1856, the mode was, as described by Lord Campbell, "to swear the witnesses in great mobs in open Court, in a way which was very irreverent, very inconvenient, and very misbecoming," so that on the first day or two of the Assizes in a large county it was almost impossible to pass and repass in the Crown Court owing to the continued pressure from witnesses who were being sworn; and that now the foreman of the Grand Jury is empowered to administer the oath to a witness in the Grand Jury room before he is examined. But, unfortunately, the Grand Jury have no knowledge of what has transpired before the committing magistrates, and are denied access to the depositions then made; the only document allowed to come before them being the Bill containing the charge, with the names of the witnesses in

support of it endorsed on the back. They have thus no means of testing the veracity of a witness, and an unscrupulous one has them at his mercy.

Indeed, so clearly was this seen to be the case, that it had come to be an accepted truth that witnesses examined before a Grand Jury were not subject to indictments for perjury—from their want of the power of ascertaining what evidence had been previously given, and that given before the Grand Jury not being taken down in writing, or given in the presence of anyone who was at liberty to divulge it. In the Act of 1856 it was thought necessary to insert a clause, “That every person taking an oath or affirmation in support of any Bill of Indictment, who shall wilfully swear or affirm falsely, shall be deemed guilty of perjury” (19 and 20 Vict., c. 54), which, however, was merely declaratory of the Common Law, and did not lessen the difficulties in the way of proving the offence. Even before the Act of 1856 such an Indictment had been tried, but without success. In 1844 a woman was indicted at the Shropshire summer Assizes for perjury alleged to have been committed before the Grand Jury on a Bill of Indictment. Of course none of the Grand Jurors could be called to disclose what had taken place in their room—their oath of secrecy precluded them. Even where a Petty Jury was accused of misbehaviour, by tossing up for their verdict, it had been held that the affidavits of the jurors that such had been done were not receivable in evidence, but that the evidence must be derived from some other source, *e.g.*, from persons *outside* the room who had seen them do it (*Vaise v. Delaval*, 1 T.R., 11). So having put in the deposition of the accused when before the magistrates, they endeavoured to prop up their case by calling a policeman, who said he had been in the Grand Jury room during some part of their proceedings, and a superintendent of police, who had been stationed *at the door* to receive

Indictments, and hand them in to the foreman, and these two supplied as much evidence as they thought requisite to contradict the deposition, and secure a conviction—but they were mistaken; the woman was acquitted—and, so far as we know, no such Indictment ever has resulted otherwise. Mr. M. D. Hill, the Recorder of Birmingham, in his charge to the Grand Jury in 1829 said, “In the metropolis it has been found that the secrecy with which, by law, witnesses give their evidence before Grand Juries, has offered facilities to criminals to tamper with them, and to procure Bills of Indictment to be ignored, upon which, if a trial had been had, and the witnesses had given their evidence under the responsibility arising from public examination, convictions would certainly have been obtained” (*Repression of Crime*, p. 10). So common and so successful, was this tampering in the early part of the present century, that the Grand Jury was called the “first hope of the London thief;” the publications of the period are full of allusions to the practice; and in the evidence given before the Committee on the Metropolitan Police in 1816, reference is made to the great number of Bills for pocket-picking, and kindred offences that were thrown out by the Middlesex Grand Jury, in the face, as was alleged, of the plainest evidence, and giving rise to suspicions of undue influences prevailing. From a return procured for the information of the same Committee, it appears that during the six years from 1809 to 1814, both inclusive, the Grand Jury of London and Middlesex threw out fully one-third of the Bills for stealing from the person, preferred to them, and about one-tenth of those for other offences.

In the years 1845-6-7, sometimes as many as forty-two Bills were ignored at a single Session of the Central Criminal Court, and twenty-eight, eighteen, and sixteen a Session so treated, was not an uncommon occurrence. At the Middlesex Sessions, during the same period, the numbers

ignored varied from thirty-one to ten a Session; while in 1849, the Chairman of the Surrey Sessions alleged, that as many as fifty persons got off every year, in that county, by the Grand Jury throwing out Bills; and the average percentage of "no Bills" throughout England and Wales, was then stated to be 5·5.

So great had the scandal become, that in Middlesex the device was resorted to of sending up a bailiff with an armful of depositions to the door of the Grand Jury room—though farther they could not legally send them—in the hope that witnesses might be under the impression that the depositions were laid before the Grand Jury, and so be induced to speak the truth. At the Central Criminal Court they adopted a much bolder course: things came to a crisis in this way. A man was indicted for stealing some pewter-pots from a public house, and an officer had traced him to a house, where he caught him in the act of melting them down. The Grand Jury, notwithstanding this, threw out the Bill; the Judge having been spoken to, ordered another Indictment to be preferred, and again the Grand Jury threw out the Bill. Some other cases of a similar description having occurred, something had to be done. The Grand Jury in the Court of Queen's Bench are, it seems, at liberty to have the depositions, and to have a Clerk to attend them under the style of the Clerk of the Grand Juries; and the Under-Sheriff having suggested the adoption of a similar course to the City Authorities, it was resolved that a Clerk should be at liberty to attend the Grand Jury with the depositions whenever they required it. Accordingly the Clerk of the Court attends with the depositions, and watches the examination of the witnesses to see if they vary their testimony, under the pretence of being ready to render assistance should the Grand Jury require it, when legally, neither he nor the depositions are entitled to be in the Grand Jury room at all, and their

proper course if guidance is wanted, is to come to the Court and ask for information. Sometimes the Grand Jury have had the courage to refuse to allow the Clerk to be present.*

At the Surrey Sessions, so many Bills were thrown out by the Grand Juries, that the Chairman suggested to them, that before throwing out a Bill, they should send into Court for the depositions, so that they might see what had been said before the magistrates; and, whenever they required it, this wholly illegal course was pursued.

We are far from suggesting that the majority of prosecutors or witnesses are open to such sinister influences at the present day; still the same facilities exist now, as formerly, and if, between the committal and the sitting of the Grand Jury, a wealthy or influential accused person can "get at" the witnesses, it is still in their power to mislead that tribunal. That such cases do occasionally happen is certain, and some of the apparently inexplicable "No Bills," can only be understood by the application of the "squaring" process. Indeed, it is within our own knowledge that a Bill for Rape has been thrown out by the Grand Jury, when on the depositions there was a clear case for committal, simply because the prosecutrix had been "got at" by the prisoner's friends—though unknown to the Grand Jury.

* Some Grand Juries have occasionally carried the sanctity of the Grand Jury room to a ludicrous extreme. At the Newcastle Summer Assizes, 1850, Mr. Justice Wightman, who was presiding in the Crown Court, desired to speak to Mr. Justice Cresswell who was sitting on the Civil side; and, as was the wont of Judges, thought to take the shortest road by passing through the Grand Jury room, which was between the two Courts. But on walking to the door he found it locked, and was informed by a policeman that the magistrates would not allow it to be opened. His Lordship swore by old Plowden, or "par Dieu," that he would break it open, when Sir C. Monck, Bart., and other Justices advanced and absolutely refused to permit his Lordship to pass; but ultimately, after some mutual recrimination, allowed him to do so, "specially on this occasion."

Although it is a thing very unlikely to happen now, it is undoubtedly within the power of a Grand Jury to act capriciously, and to be guided by party spirit, or religious or political caprice, and yet to enjoy complete protection under their oath of secrecy; such examples are not wanting in the seventeenth century, and, notwithstanding the legal provisions made to secure perfect impartiality it would be exceedingly difficult to bring to light any suspected action of theirs—unless, as sometimes happened, they chose voluntarily to give the information.

By the Common Law all Indictments must be found by persons who are the King's lawful liege people, duly returned by Sheriffs or Bailiffs of franchises, and inhabitants of the county for which they inquire (2 Rob. Ab., 82), and by 11 Henry IV., c. 9, if any Indictment be found by persons who are outlawed, or not the King's lawful liege people, or not lawfully returned, then it shall be void. Under this statute arose the case of Robert Scarlet at Bury Summer Assizes in 10 James I. At the Woodbridge Quarter Sessions, Scarlet, had induced the clerk to read out his name as one of the Panel of the Grand Jury (although not on it), and he was afterwards sworn; and "the rest of the great Inquest giving faith to him indicted seventeen honest and good men upon divers penal statutes, which was done by the said Robert Scarlet maliciously"; all the Indictments so found were held void, and Scarlet was indicted and afterwards fined and imprisoned.

In 1293 (21 Edward I.) at Newcastle-on-Tyne, before Hugo de Cressingham and his fellow Justices itinerant, John de Ireby was committed to Gaol, on the testimony of his fellow jurors, because he had procured a false presentment to be made by them, so as to conceal a felony, concerning which *plenam scivit veritatem* (1 Rot. Parl., 121).

That a Tribunal that has outlived, by some centuries, the circumstances that called it into being and rendered it of

value, should still be maintained and defended, when it has been found necessary to secure its aims by other and more efficient means, is strange. Were it simply ornamental and harmless, reverence for the past might lead one to throw protection over this, as well as other, ancient monuments; but when its influences are evil, and, as Bentham says, a bar to penal justice, such antiquarian considerations must give way. They—a Jury without a Judge—not necessarily possessing any legal knowledge, and a Quarter Sessions Grand Jury *never* has any magistrates sworn on it—have now to repeat the Inquiry already made before the committing magistrate, who is generally a trained lawyer, and when not, is assisted by one, as clerk; and this they have to do under every disadvantage, and to pass in review his wisdom and prudence, rather than the merits of the case. If criminal proceedings began with this Inquiry, as in old times, instead of having it in the middle, its uselessness would not be quite so apparent. It is well known that in the case of an Inquisition before a Coroner, if the verdict is one of murder or manslaughter, the Inquisition is equivalent to the finding of a Grand Jury, and the parties may be tried and convicted upon it (Blackburn, J., in *Reg. v. Ingham*, 9 Cox C.C., 508). Upon such a verdict, if it is not a case for bail, it is the duty of the Coroner to issue his warrant for the apprehension of the accused, and to commit him to prison, or if he be already there, to issue a detainer to the gaoler in whose custody he is. Yet of this Mr. Justice Lush says, “The Coroner’s Inquisition frequently causes expense and inconvenience, and never, in my experience, does any good.” . . . “The power of the Coroner to commit for trial should be taken away, and instead, he should have the power, and be under the obligation, to send every person found guilty by his Jury before a Justice, to be charged in the ordinary way with the offence. Every good purpose of the Inquiry would thus be answered, and much

expense and inconvenience be prevented " (5th Report, Judicature Com.)

Bentham, in his *Rationale of Judicial Evidence*, Book 3, Chap. 15, treating of the incongruities of English Penal Procedure, thus sums up those of the Inquiry before the Grand Jury: " The operations of this intermediate tribunal may be set down as purely mischievous. They once had an object, but that object has been done away. . . . The object was to preserve an innocent man from the vexation incidental to prosecution ; and innocent he might well be pronounced, if, even upon the face of the evidence produced against him by the adversary, delinquency did not appear probable. The design was laudable ; and to this design, the procedure, whatsoever might be the inconveniences attached to it in other respects, was naturally enough adapted. 1. Evidence was received only on one side—on the side of the prosecutor ; on the side of the defendant, not, for to call upon him for his evidence would be to subject him to the very vexation from which it was intended he should be preserved. 2. The evidence was received and collected in secret ; that is to say, in so far as secrecy was compatible with the presence and participation of a number of persons (the persons composing the Grand Jury) from twelve to twenty-three. In the same intention, these Jurymen were sworn to secrecy. Why ? Because at this time, the defendant knew nothing of the matter. The Bill being found by this Jury (*i.e.*, the accusation pronounced to have had a sufficient ground in point of evidence to warrant the ulterior inquiry) thereupon went an order for his arrestation. Had it not been for the oath, a friendly jurymen might give intimation, and the defendant make his escape. In the first place then, the institution is useless ; it has been so about these two hundred and fifty years. The defendant has been already subjected to the vexation from which he was thus to have been preserved. From the middle of the

sixteenth century, the examinations above described (*i.e.*, the examinations before Justices) have taken place. In the next place, it is mischievous. It is so in no small degree. One of the great boasts, as well as one of the greatest merits, of English Procedure, is its publicity. This security, it has been seen, is sacrificed; sacrificed, and so continues to be, after the object for which the sacrifice was made is gone. The consequence is, an unlimited domination to popular prejudice; to party, if not personal interest and affection; to false humanity; to caprice under all its inscrutable modifications."

The objections urged by Bentham seem not less applicable now than they were when he wrote, and the subject has engaged the attention of the public from time to time for many years. The Commission appointed in 1845 to inquire into the state of the Criminal Law took a considerable body of evidence on the subject of Grand Juries, and that question was subsequently further investigated by a Committee of the House of Commons; and as a consequence of these investigations a Bill was in 1849 brought in by Sir J. Jervis to facilitate the administration of justice in the Metropolitan districts, which contained provisions rendering unnecessary the intervention of Grand Juries in criminal trials. That Bill was referred to a Select Committee, before whom many experienced men were examined, all of whom were unanimously of opinion that it was desirable that Grand Juries should not be assembled within the Metropolitan districts. Nothing farther was then done on this subject. In 1852, Sir F. Thesiger introduced a Bill to dispense with Grand Juries within the Metropolitan district, but was compelled to withdraw it in consequence of the dissolution which soon after took place, and there the matter rested till 1857, when he again sought to deal with the subject by means of a Bill "to dispense with the attendance of Grand Juries at the Central Criminal

Court and at Courts of General and Quarter Sessions holden within the Metropolitan Police District, except in particular cases," which Bill, it is needless to say, did not then, and has not since, become law.

During all this time, however, the public were not quite apathetic in the matter, as was evidenced by the observations made by Judges on the Bench, by legal practitioners, and the tone of the press. Even the Grand Juries of the Central Criminal Court and the Middlesex Sessions had got into the habit of annually presenting themselves as useless and as an absolute impediment to justice.

During the years 1845, 1846, 1847, and 1848 the Middlesex Grand Jury made at least ten written presentments expressive of their inutility as an intermediate tribunal, and of their being frequently made the means of frustrating the ends of justice; and in addition to those written presentments, many verbal ones to the same effect were made by them. During the same period the Grand Juries at the Central Criminal Court made many similar verbal presentments, and in July, 1848, they made a written presentment, expressing a decided opinion that a Grand Jury was no longer required for the furtherance of the public welfare, but that its existence was absolutely obstructive of the ends of justice, and favourable to the extension of crime.

In 1852, the Recorder of London, in a charge to the Grand Jury of the Central Criminal Court, observed that "The great mass of the cases were, as usual, of the ordinary description, and many of their predecessors in that box had expressed an opinion that it was unnecessary that they should be called together for the purpose of considering such cases. With regard to the great body of them, which had previously undergone full inquiry by magistrates of great experience and legal knowledge, he (the learned Recorder) entirely concurred in the opinion of the Grand Jury that their services in this district were perfectly useless. He

was afraid that the Grand Jury not only occasioned a very great loss of time, but that they also were the means of increasing very considerably the expenses of criminal prosecutions, and that in some instances the Grand Jury also afforded an opportunity for parties to defeat the purposes of justice by tampering with the witnesses, and that in others they were made the medium of occasioning great injustice, by affording vindictive persons an opportunity of preferring unfounded charges behind the backs of those they accused." At these same Sessions, the Grand Jury made the following presentment:—"The Grand Jury of the fifth Session of the Central Criminal Court of the year 1852, beg leave to express their unanimous opinion that a Grand Jury within the limits of the jurisdiction of the stipendiary magistrates is wholly unnecessary. It increases the expense and adds to the delay of criminal prosecutions. It affords an opportunity for corruption and for tampering with prosecutors and witnesses. It enables an evil-disposed person to throw his victim into prison by a false *ex parte* statement made behind his back and without any previous notice. It is, in fact, an instrument of extortion and of oppression, and as it frustrates the ends of justice it is worse than useless, and ought to be immediately abolished. The Grand Jury having been informed that presentments to the same effect have been made by other Grand Juries; that copies of several of these presentments have been laid before the House of Commons on the motion of Mr. Matthew Forster, the member for Berwick; that a Committee of the House of Commons appointed to investigate the subject reported that such a tribunal had become unnecessary; that a Bill was introduced into Parliament by the present Lord Chief Justice of the Common Pleas, the Right Hon. Sir John Jervis, to abolish it, but which Bill was allowed to be dropped by the late Ministry; they consider that to suffer its continuance in

opposition to the often recorded opinions of those best qualified to judge of its utility has a tendency to bring into contempt not only the administration of justice, but the laws of the country. The Grand Jury therefore request that a copy of this presentment may be forwarded to the Prime Minister, and to the Secretary of State for the Home Department of Her Majesty's new Ministry, and they hope that a Bill to abolish the Grand Jury of the Central Criminal Court and of the Middlesex Sessions will form a part of their earliest measures of law reform."

So far the Grand Jury's own opinion of themselves; now for that of those who had seen and had experience of the working of the tribunal in the practical administration of justice. Sir Frederic Thesiger, in moving for leave to introduce his Bill in 1857, said—"Justice in their hands was liable to miscarry, either from a misconception as to their own functions, some jurymen imagining that they had to decide on the guilt or innocence of the accused; or from the witnesses being tampered with and induced to suppress the evidence they had previously given when before the magistrates. This the witnesses could do in perfect security, because their examination before the Grand Jury was conducted in secrecy. In fact, the Grand Jury system multiplied the chances of escape for the guilty to such an extent that it was called 'the hope of the London thieves.' . . . As an illustration of the present system, he thought he could not mention anything more forcible than a case which occurred last year in his own experience. The medical attendant of a county lunatic asylum, after having been assaulted by a patient, directed him to be taken to a shower-bath, to be kept there for half-an-hour, and afterwards to have a dose of tartar emetic. The unfortunate man was placed in the shower-bath, and after having been kept there for twenty-eight minutes he was removed, the medicine which had been prescribed was given to him, and

in half-an-hour afterwards he died. He (Sir F. Thesiger) did not venture to express any opinion with regard to the conduct of the medical man. The treatment which he ordered might have been necessary to his patient, but nobody could doubt that that was a subject which ought to have undergone a most searching investigation. And so thought one of the most able, intelligent, and experienced of the police magistrates (Mr. Henry) before whom the charge was made against the medical man ; for, after having carefully examined the whole of the case, he thought it was his duty to send the party for trial. The Grand Jury, however, for reasons which were unknown, chose to think that it was not a case for inquiry, and they threw out the Bill."

. . . . "But the mere throwing out of Bills by Grand Juries in such cases was not one-half of the evil consequent upon this system within the Metropolitan district. He believed that there was hardly a Session of the Central Criminal Court or a Middlesex Session held without persons preferring indictments for different classes of misdemeanour for the purpose of revenge or extortion. The particular misdemeanours which were generally made the subject of these accusations were conspiracy, perjury, keeping gaming or disorderly houses, and obtaining money under false pretences. It was not at all necessary that the parties should go before a magistrate to prefer accusations of that description. If a person was desirous of gratifying his malice or extorting money, he might wait for the assembling of the Grand Jury, and then, without the slightest notice to the party, he might prefer his Indictment. The proceedings were altogether secret. If the party got his Bill, application might be made at once for a Bench Warrant ; and Saturday was the day generally selected for that purpose, because then the party must remain in custody for nearly two days before bail could be given. Having secured that engine of extortion, it was set to work, and the accusing party had

good grounds for hoping that the accused would compromise the matter with him, rather than submit to the exposure of a public trial." The following case affords a fair illustration of the method of procedure of those speculators in crime and of the worry and expense they could cause to their victims, unless they chose to make terms with them. At the Berkshire Summer Assizes, 1840, a person named William Humphreys had presented a Bill to the Grand Jury against William Hibbond, the clerk of the course at Ascot, by the name of John Hebbott, for keeping a gaming house, and a tent, booth, or place for gaming, on Ascot Heath, at the time of the races there. The Bill having been found by the Grand Jury, Mr. Hibbond was, in June, 1842, while acting as clerk of the course at Ascot, taken on a Judge's warrant founded on this Indictment, and brought by a Metropolitan policeman before Mr. Hall, the Chief Magistrate of Police, and by him discharged. But in June, 1844, while acting as a Judge at Hatcham Park races, he was again taken on the same warrant and brought before Mr. Combe, a police magistrate, when he entered into a recognizance with two securities to appear at the next Assizes. At the Assizes he surrendered to take his trial, and the prosecutor and his witnesses having been called three times and not appearing, the defendant was discharged by proclamation under the Commission of Gaol Delivery (*Reg. v. Hibbond*, 1 C. and K., 461).

When once a Bill was found, unless the defendant came to terms, the charge could, by simply doing nothing, be kept hanging over him for an indefinite length of time; as a defendant could not force on the trial in the absence of the prosecutor, unless he had given him ten days' notice of trial, and prosecutor was usually too astute to allow him the opportunity of doing so (*Reg. v. Minshull* 8 C. and P., 576).

In 1849 the Common Serjeant of the City of London, said in his evidence before a Select Committee: "If I were

a thief, the Grand Jury is the chief thing I should reckon upon; I mean in London, in the metropolitan districts; because a London thief understands matters that country people do not."

The then Under-Sheriff of the City adds, "parties who are most guilty frequently escape through the intervention of the Grand Jury. It is done in this mode; after the evidence is completed and perfected at the police-office, those who are experienced in committing crimes know that almost their only chance of escape is by keeping away the witnessess, or bribing them to suppress their testimony, and we know that the most expert thieves, what are called the 'family men,' the 'cracksmen,' about London, are generally the parties who avail themselves of this opportunity. The most expert of those persons apply themselves to the witnesses, and they succeed in either keeping one out of the way whose testimony is most material, or getting others to soften down their evidence, so that, in this case, the Bill is thrown out."

Mr. C. W. Humphreys, a Solicitor who had practised very extensively for many years before the Central Criminal Court gave it as his experience, that the Grand Jury was frequently made use of as an instrument of oppression and extortion, and of preferring Indictments for the purpose of obtaining money from persons accused.

The Clerk of Indictments at the Central Criminal Court averred that compromises were facilitated by the Grand Jury System; that it was not uncommon to have charges of attempted rape preferred against persons in the higher ranks of life, and a committal made by the magistrates; that then the prosecutrix got bought off and gave evidence before the Grand Jury on which they, being unacquainted with the circumstances, threw out the Bill. Old offenders (he adds) know that that is a mode in which parties may be bought off without danger to anyone." The same witness

stated that on an average ten or twelve Bills for misdemeanour were each Sessions presented directly to the Grand Jury, without the intervention of a magistrate.

These being some of the more glaring iniquities arising from the Grand Jury system, let us see what has been done to remedy the evil. The Central Criminal Court Act, with a view to the prevention of such abuses as have already been referred to, provided that no Bill for misdemeanour, except for perjury, should be presented at the Central Criminal Court, unless the accused was in custody, or unless the prosecutor was bound in recognizances. The result was that prosecutors simply preferred such Bills before the Grand Jury at the Middlesex Sessions, and, having got them found, had them removed to the Central Criminal Court; thus no magisterial investigation was rendered necessary, no recognizances were entered into, and the provisions of the Act of Parliament were effectually evaded.

Sir Frederic Thesiger's attempts in 1852 and 1857 to sweep away the cause of these evils within the metropolitan district, where they were most felt, resulted in failure. But the efforts at amendment were not abandoned; in 1858 Lord Campbell introduced a Bill having for its object "to prevent a person going before a Grand Jury and preferring an Indictment against a party behind his back and without notice, and then procuring a warrant and getting him arrested with the view only perhaps of extorting money." This measure, it is needless to say, met with a determined opposition from the supporters of our ancient institutions; they saw in it but the shadow of coming events—a threatened onslaught on the whole Grand Jury system, and a covert attempt to get rid of it by a blow aimed at it in secret and behind its back (which, if true, ought to have endeared it to the hearts of the objectors!); as proposing a fundamental change in the constitutional rights of British subjects, and interfering with their most cherished privilege of

putting the Criminal Law in motion,—and so the obnoxious measure was shunted for that Session. Next Session, however, the same measure was again brought forward and successfully carried through, under the title of “An Act to Prevent Vexatious Indictments for Certain Misdemeanours” (22 and 23 Vict., c. 17). By that Act after the 1st September, 1859, no Bill of Indictment for any of the following offences—perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling house, keeping a disorderly house, indecent assault, was to be presented to or found by a Grand Jury, unless (1) the prosecutor had been bound by recognizance to prosecute the accused, or (2) the accused had been committed or bound over to answer the Indictment, or (3) the Indictment had been preferred by the direction or with the assent of a Judge of the Superior Courts or of the Attorney or Solicitor-General. But where a magistrate, after investigation, refused to commit the accused for trial, Section 2 of this Act enabled the prosecutor to insist upon the magistrates taking his recognizance to prosecute, and thereupon the informations, &c., have to be transmitted to the proper Court as in case of a committal. This Act was calculated to have, and had, a most beneficial effect; but still prosecutions for purposes of extortion or from other improper motives did not cease. Under the Act of 1859 it was still open to a prosecutor to insist on going before the Grand Jury upon his own responsibility, and probably on his own evidence obtaining a True Bill. Having got the Bill found, the object in view was attained, and the accused, after being put to great inconvenience, and having incurred expense in providing counsel and witnesses, probably found his trial put off on some pretext or other, and with the charge left hanging over him was generally driven to a settlement of what was only a civil dispute between the parties. In 1867 the Recorder of London (Mr. Russell

Gurney) in an Act to remove some defects in the administration of the Criminal Law promoted by him, procured the insertion of a clause designed to meet the above class of cases. This was Section 2 of the 30 and 31 Vict., c. 35, which provides that on the acquittal of any person indicted, who has not been committed or held to bail, the Court may, in its discretion, order the prosecutor to pay costs to the accused.

Considering the unanimity of opinion that prevailed as to the evils attendant on the Grand Jury system, more especially as manifested in the metropolis; that Sir Frederic Thesiger, in 1857, declared: "that all those whose attention had been called to this subject—whether Judges of the Superior or of Criminal Courts, Grand Jurors, barristers, solicitors, or magistrates—all concurred in the opinion that within this particular district, there was no necessity whatever to continue the assembling of Grand Juries, but that the present system was rather detrimental than conducive to the administration of justice;" it is curious to note the smallness of the results attending the efforts to abolish the system, even within that limited area, and how the venerable obstruction to penal justice still clings as tenaciously to the metropolis, as does the Civic Griffin to the site of Temple Bar. Yet it is but fair to chronicle one small success achieved: what was known as the Middlesex Grand Jury had been accustomed to assemble every Term in the Court of Queen's Bench, there to receive a charge from the Senior Puisne Justice, who got an addition of £150 a year for his trouble. But, as it frequently happened, that though the Grand Inquest was there, and the Senior Puisne was there, nothing had occurred on which to charge, these twenty-three liege subjects of the Queen thought this waiting for the happening of the unexpected was a bore, and in 1872 they succeeded in getting it enacted that it should not be necessary to summon a

Grand Jury of Middlesex to come before the Queen at Westminster in any Term, unless notice had been previously given them by the Master of the Crown Office, that he had discovered some business to be brought before them (35 and 36 Vict., c. 52*).

Such remedial measures as have been passed, have not been confined to the metropolitan area, but have been applied to the whole country, and, therefore, afford presumptive evidence that the evils complained of pervaded the whole system, and were not confined to any particular locality; especially when coupled with the fact, that the

* The Court of Queen's Bench being the highest ordinary Court of Criminal Jurisdiction within the realm, has a paramount authority to Justices of Gaol Delivery and Commissions of Oyer and Terminer. All offences, therefore, committed in Middlesex, when the Court sits, may be originally prosecuted in this Court by Indictment; persons in Her Majesty's service abroad, committing offences there, may be prosecuted in the Queen's Bench by Indictment, or information, laying the venue in Middlesex (42 Geo. III., c. 85, the *King v. Jones*, 8 East, 31), and if High Treason be committed out of the kingdom, it can only be tried in the Court of Queen's Bench, or under a Special Commission (33 Hen., VIII., c. 23).

In every Term two Grand Juries for the County of Middlesex, who were to present all matters criminal arising within that county, were summoned and sworn before the Senior of the Puisne Judges, on some day fixed by such Judge in the early part of the Term. When they appeared, the Judge gave them such a charge as he thought requisite, after which, they retired to the Grand Jury room, Westminster Hall, for the transaction of business, being attended by the Clerk of the Grand Juries, who read the Bills to them and, after their finding, they came into Court and presented in the usual form. Their practice was, on adjourning to the Grand Jury room, to appoint subsequent days of sitting; and precepts were thereupon issued from the Crown Office to the constables in the different districts, to make returns of all nuisances, &c., which, on their return, are considered as presentments and are so prosecuted. The two Juries appointed separate days for receiving the constables' returns. The Jury who received the presentments of constables for the more remote parts of the county assembled at the Grand Jury room, to find Indictments on the last day but two of the Term; and the Jury acting for the metropolis and the adjacent parts, in the like respect, assembled for the same purpose, on the last day but one of the Term; and after returning their respective presentments and Indictments, were discharged.

presentments on the subject had been made by the Grand Juries of Birmingham and various other parts of the country. And yet strangely enough the innovators always approach this subject in a half apologetic tone; Sir F. Thesiger in 1857, while trying to sweep away the system in the metropolis, "wished it to be understood that he was not prepared to prevent the assembling of Grand Juries in the provinces. He deemed it advantageous to the public that magistrates and gentlemen of the counties should be associated with the Judges in their periodical administration of criminal justice throughout the country." The interesting the people in the administration of justice, seems to be the utmost so high an authority as Mr. Justice Stephen can say in its favour; and their case is thus stated by Mr. Forsyth in his History of Trial by Jury. "With respect to the district within the jurisdiction of the Central Criminal Court, the idea (*i.e.*, the abolition of Grand Juries) is perhaps well founded. The legal knowledge and practised vigilance of the magistrates of the metropolis render it almost superfluous to subject their committals to the supervision of another tribunal before a prisoner is put upon his trial, and it is a great hardship that busy tradesmen should be taken from their avocations and detained for several days at a time upon an Inquiry, which is followed by no useful results so far as respects the jurymen themselves. But the case is very different in the counties which the Judges visit in their periodical circuits. The Grand Jury there consist principally of the landed gentry and magistrates of the county, and it is of the highest importance to secure their attendance on such occasions. They are thus called upon to take their part in the great judicial drama and see justice administered in its purest and most enlightened form." "But besides all this, the Grand Jury can often baffle the attempts of malevolence." (Would it not be nearer the truth to say

that the attempts of malevolence often baffle the Grand Jury ?) The writer further seeks to strengthen his case by pressing into his service the opinions of French jurists who, he alleges, feel the want of a tribunal corresponding to our Grand Jury ; and he quotes from M. Bérenger's writings on Criminal Law, to show that he deplores the abolition of the *Jury d'accusation* principally because it got rid of secret investigations, and from M. Oudot's *Théorie du Jury* in which he declares his opinion that the *Jury d'accusation* was the only means of preserving innocent persons from accusations arising from party spirit and malevolence—both of which results have been hitherto supposed to be peculiarly characteristic of Grand Juries in England.

Now if a Grand Jury is so good for the inhabitants of counties, one would like to ask what the dwellers in towns have done to forfeit the boon ? Or is it that the latter have so increased in intelligence that they have outgrown Grand Juries, while the county people are still in legal leading strings ? Possibly this may account for a good deal of "Justices' Justice," and the association of the popular element in its administration be but another illustration of the old adage, that too many cooks spoil the soup. Indeed it is worthy of consideration whether it is not a misplaced economy ever to entrust the administration of the laws—especially those that concern the liberty of the subject—to any but trained lawyers ; and whether the lay or popular element should ever be represented in such inquiries except in the character of assessors.

In seeking to limit the abolition of Grand Juries to the metropolitan area, great stress has been laid on the improved system of preliminary investigation consequent on the possession of Stipendiary Magistrates ; though curiously enough, within the City of London, the most populous and the busiest part of the metropolis, there are none but unpaid or lay magistrates assisted, as in the country, by clerks.

But the appointment of a Public Prosecutor or the adoption of some improved system of preliminary investigation into offences might, it is said, render it necessary to consider the whole subject of Grand Juries.

Let us see how far these conditions have been fulfilled. Under the operation of local Acts, the more important provincial towns, such as Liverpool, Birmingham, &c., have long enjoyed the advantage of Stipendiary Magistrates; while by an Act passed in 1863, cities, towns, and boroughs containing 25,000 inhabitants and upwards are enabled to appoint Stipendiary Magistrates, on their satisfying the Home Secretary that due provision has been made for the salary and for Court accommodation; which power most of the centres of commercial and manufacturing industry, and indeed all those places wherever the business was at all considerable, have not been slow to avail themselves of. And even where Stipendiaries do not exist, the "great unpaid" are obliged to have, as their clerks, duly qualified Solicitors who are quite competent to afford them guidance in the law.

It cannot, however, be affirmed with truth that we have yet got a Public Prosecutor—though some people think we have—but we have got a Director of Criminal Investigations, and, since 1879, a Director of Public Prosecutions, who is supposed to exercise some control over the criminal business of the country.

Upon the whole, therefore, we think we are warranted in suggesting that provincial England is not so very far behind the metropolis in its provision for the investigation of crime, and that the time has come when the whole Grand Jury system will bear investigation.

"We doubt (say the Criminal Code Bill Commissioners) whether the existence of the power to send up a Bill before a Grand Jury without a preliminary inquiry before a magistrate, the extent of this power, and the facilities which

it gives for abuses, are generally known. It is not improbable that many lawyers, and most persons who are not lawyers, would be surprised to hear that theoretically there is nothing to prevent such a transaction as this:— Any person might go before a Grand Jury without giving any notice of his intention to do so. He might there produce witnesses who would be examined in secret, and of whose evidence no record would be kept, to swear, without a particle of foundation for the charge, that some named person had committed any atrocious crime. If the evidence appeared to raise a *prima facie* case, the Grand Jury, who cannot adjourn their inquiries, who have not the accused person before them, who have no means of testing in any way the evidence produced, would probably find the Bill. The prosecutor would be entitled to a certificate from the officer of the Court that the Indictment had been found. Upon this he would be entitled to get a warrant for the arrest of the person indicted, who, upon proof of his identity, must be committed to prison till the next Assizes. The person so committed would not be entitled as of right to bail if his alleged offence were felony. Even if he were bailed, he would have no means of discovering upon what evidence he was charged, and no other information as to his alleged offence than he could get from the warrant, as he would not be entitled by law to see the indictment, or even to hear it read till he was called upon to plead. He would have no legal means of obtaining the least information as to the nature of the evidence to be given, or (except in cases of treason) even as to the names of the witnesses to be called against him; and he might thus be tried for his life without having the smallest chance of preparing for his defence, or the least information as to the character of the charge.

Of course, in practice, the conviction of an innocent man under such circumstances would be practically impossible.

The Judge would postpone the trial, the Jury would acquit the prisoner, the prosecutor would probably be subjected to exemplary damages in an action for malicious prosecution; but it still remains that such is the law, though it could not be put in force without shocking the feelings of the whole community. That such, however, is the law, subject only to certain exceptions hereinafter mentioned, there can be no doubt" (p. 33 of Report).

And yet after this exposure of a procedure that shocks the feelings of the whole community; after acknowledging that the Grand Jury had long ceased to report matters within their own knowledge; that the initiation of a charge before a magistrate is by far the fairest and most satisfactory in every way; the Grand Jury is still to bar the way to justice with this provision of the Code that they shall not present anyone who has committed an indictable offence except upon a Bill of Indictment duly sent before them (Sec. 506).

With its counterpart, the Coroner and his Jury, who had a power of accusation concurrent with that of the Grand Jury, the Commissioners have not dealt so tenderly.

The Select Committee on the Coroner's Bill of 1879 conclude their report in these words:—"Your Committee consider that the double investigation which now takes place before the coroner and the magistrates in cases where a person is accused of a crime in relation to a death upon which an inquest has been held, is a cause of needless expense and inconvenience; and they are of opinion that though it may not be feasible to avoid it in all cases, yet that if a system of efficient salaried legal coroners were established throughout the country, it might be possible to confer upon them the powers of a stipendiary magistrate, and thus obviate the evils referred to. To carry this out, it would no doubt be requisite to consolidate the areas of many coroners' districts."

And the Criminal Code proposes that no one shall be tried upon any Coroner's Inquisition (Sec. 506).

With this general confession that the Grand Jury has far outlived the purpose of its institution, that the objects aimed at by it are no longer attained, it seems strange that such excessive tenderness should be manifested towards it. It is not that it has simply become useless; it has become a positive hindrance to justice, facilitating compromises, fostering extortion, and causing expense and waste of time and money. The needless expense caused by the attendance of prosecutors and witnesses before the Grand Jury, has been calculated to amount to one-third of the whole cost of prosecution; and though something has been done at Assizes to diminish this, by making out lists of the cases for each day to go before the Grand Jury, the expense is still an appreciable one, while at Sessions no such saving is attempted, except the rough and ready one of taking felonies before misdemeanors. Officials of tried experience have not hesitated to express the opinion that the abolition of Grand Juries would, with the institution of a Public Prosecutor, act well in England; as the responsibility for the prosecution in all cases that ought to be prosecuted would rest with that officer, who would have the depositions laid before him, and consider whether the case should be proceeded with, or further evidence obtained, or whether the case was so weak that it ought to be abandoned, which system has been found to work well in practice with the French, and in the Northern parts of this Island. Even as we write, we find the burden of our story taken up by the Grand Jury of Essex, who at the April Quarter Sessions for that county, finished their labours by making a presentment that the Grand Jury system was no longer of any practical utility in the administration of justice, and involved a waste of time and expense, a view still more forcibly expressed by a Grand Juror of Middlesex,

in a letter published in the *Daily Telegraph* on the 10th May last, under the title of "The Grand Jury System."

That the common course of initiating proceedings before a magistrate which is acknowledged to be the fairest, should afterwards be brought before a tribunal whose action is exceptional and liable to become unfair is indefensible; and as to the objection urged against magistrates sending cases for trial, that in times of political excitement they might swerve from their duty from fear of removal from office—well, we would not give much for the tenure of office of any minister who recommended a magistrate's removal for doing his duty. At the same time we would not make use of so harsh a term as abolition to so venerable, and in its time so useful, an institution; it has done good service of old, has shielded the subject from exaggerated notions of prerogative, and maintained the liberty of conscience when such could not be done without risk. But now that its sphere of usefulness is past, and that its influences are no longer for good, it would only be a graceful act to stand aside and enjoy a merited repose, while making way for other and more effectual methods of securing the object it once had in view; it would be enough to say with reference to them, as was done in the Judicature Acts with the ancient Order of Serjeants, that it should no longer be necessary for Grand Juries to assemble, or for Bills of Indictment to be presented to or found by them, and then in all probability they would quietly drop out of sight and cease to take any part in the Judicial Drama.

JOHN KINGHORN.



III.—ROMAN LAW IN ENGLAND AND BELGIUM.*

THE development of the study of Roman Law has made its mark upon Educational Literature in this country as well as on the Continent. Beginning as we may be said to have done, at least in the case of the English Universities, with the study of the Institutes of Justinian, we have advanced to a more analytical study of the Law as set forth in the earlier Institutes of Gaius, and we have now come to its consideration in the ampler form of the Digest. The Northern Universities have taken a good share in this work, as we had occasion to point out in noticing the valuable edition of Gaius by Professor Muirhead of Edinburgh. To Dr. Holland, whose labours in conjunction with Mr. Shadwell have resulted in the handsome volume of *Select Titles* now before us, students of Roman Law had already been indebted for an edition of the Institutes of Justinian as a Recension of Gaius. In the *Select Titles from the Digest*, the object is yet wider, for it is the aim of the learned Editors to lead the reader to the fountain-head, and induce him to draw his knowledge from the Fathers of the Jurisprudence of Imperial Rome, whose opinions were allowed *jura condere*.

The selection made by Dr. Holland and Mr. Shadwell embraces the principal features which differentiate the Roman Law, and which have either passed into modern systems or at least have sensibly influenced them. For their book is on the whole a Compendium of the Roman

* *Select Titles from the Digest of Justinian*. Edited by T. Erskine Holland, D.C.L., of Lincoln's Inn, Barrister-at-Law, Fellow of All Souls' Chichele Professor of Diplomacy and International Law in the University of Oxford. Oxford: Clarendon Press. 1881.

Introduction Historique au Droit Romain. Par Alphonse Rivier, Professeur à l'Université de Bruxelles. Nouvelle Edition. Bruxelles: G. Mayolez. 1881.

Law of Family Relations, and of Obligations. How wide a field these two terms cover it is needless here to point out. The master work of Savigny on the one portion of this theme, and the very elaborate volumes dedicated to the other portion by the Dean of the Faculty of Advocates, now Lord Fraser of the Court of Session, are sufficient to mention as testifying to the permanent and practical interest which we have in those branches of Roman Law, as the sources of our own juridical science.

Every study must have its introduction. Messrs. Holland and Shadwell have given the student as his stepping stones to fuller knowledge, the celebrated Titles, "De Justitia et Jure," "De Verborum Significatione," and "De Diversis Regulis," with others equally useful, though perhaps not so generally read. The last two of these Titles, we may remark, were long ago "selected" by one who may thus be called to some extent a predecessor of Messrs. Holland and Shadwell, namely, Theodore Haak, of Leyden, for his edition of the Institutes of Justinian, with the Latin version of the Paraphrase of Theophilus (Lugd. Bat., 1733). This is, indeed, in both cases what may be called an instance of natural selection.

Fortified by the understanding imparted to him in the Introductory Titles, the student proceeds, under the guidance of the Oxford editors, to a consideration of Status, and learns from Gaius that men are either free or slaves, a doctrine which Florentinus corrects for him by the famous statement that slavery is a constitution *juris gentium*, and that it is *contra naturam*. The influence of this statement as to the true legal character of slavery, it would be difficult, we think, to exaggerate. Consciously or unconsciously, it has entered into the innermost recesses of modern thought and modern feeling: it has been carried from the field of thought into the field of action; it has been absorbed, as it were, into the very being of Great

Britain. Rarely, indeed, has it fallen to the lot of any one philosophical speculation so to impress itself upon the history of the world. The Stoic philosopher had, it is true, no idea of living up to the level of a tulip or a set of blue china; but he knew something more than most of his fellows what was meant by his favourite doctrine of living according to nature. Something more, too, he knew than most of his fellows of what he was constrained by his principles to condemn as contrary to nature, and foremost in his condemnation stood slavery, that "*constitutio juris gentium, qua quis dominio alieno contra naturam subjicitur.*" It has taken the modern world a long series of ages to reach the point so clearly attained by Roman Philosophy, and so distinctly laid down in Roman Law. Another of the cardinal doctrines of the Stoic Philosophy, that of the brotherhood of men, involved in the World State, of which all particular States are but houses or streets, a doctrine which practically underlies most of the modern arguments in favour of International Arbitration, as well as of International Law in general, still awaits the full acceptance of the modern world. That acceptance would, of course, be moral, rather than juridical, for we should not deduce from the Stoic conception the necessity urged by some living publicists for an International Executive, to direct the relations of the several States. That we believe, would be practically impossible, and were it possible we agree with those who would pronounce it undesirable. Freed from any such exaggerations, the doctrine itself remains, a goal as yet unattained.

M. Rivier, whose able work on Successions in Roman Law we noticed in these pages, although most widely known probably through his unwearied exertions in the cause of the Law of Nations, is also, as our readers at least will know, one of the most distinguished of the rising school of Roman jurists in Belgium. The place which

Professor Rivier himself assigns to his country in the scale of the nations where the study of Roman Law prevails, is not, indeed, in the front rank, but the same has still to be said withal for ourselves. Belgium awoke earlier than we did to the necessity of the critical study of Roman Jurisprudence, and has continued keenly alive to it. Occupied in the early part of this century as an outpost by German Professors of Roman Law, the "missionsland" now carries on its own propaganda out of its own intellectual resources. Professor Rivier's treatment of his present subject is, as his title indicates, historical, and rightly so. It is indeed only an outline, but one which the learned author supplies his readers with the means of filling up for themselves. That a work of this character should follow the historical method seems to be natural and proper. We do not understand how it could well be otherwise. To teach Roman Law without reference to Roman History, or Roman History without reference to Roman Law, appears to us something very like the play of Hamlet with the Prince of Denmark omitted from the *dramatis personæ*. The bibliographical references so plentifully supplied by M. Rivier throughout his book constitute one of its special titles to practical utility as an educational work. In the hands of a good lecturer such a volume would be most suggestive, and it would be no less so, we may add, to a student for honours in the Law Schools at our Universities, or at our Inns of Court. Used side by side with Messrs. Holland and Shadwell's *Select Titles*, M. Rivier's *Droit Romain* would be found a most valuable aid alike for teacher and pupil. The two books indeed supplement each very appositely. There are some selections made by Professor Rivier which we cannot but think might with advantage have been printed at length, and not simply briefly summarised, by Messrs. Holland and Shadwell, in further elucidation of their own subject-matter. Thus, for instance, Prof. Rivier

gives us, very much *ad rem*, the Constitution *Deo Auctore* of XVIII. Kal. Jan., Lampadius and Orestes being Consuls (15th Dec., A.D. 530), and the Constitution *Tanta*, of XVII. Kal. Jan., Justinian our lord being for the third time Consul (16th Dec., A.D. 533). These two Constitutions strike us as being particularly valuable for the purpose of making clear the intention of the Digest, as it presented itself to the minds of its framers. Our *studiosa juventus* could go to no better authority than that here given. They are extremely interesting, moreover, not only in the light they throw upon the Digest itself and its compilation and order, but also as enshrining thoughts on the true method of Law Reform and Codification which might profitably be studied at the present day. And these are only two of the many points in this feature of M. Rivier's book upon which we feel bound to express our gratitude to him, alike for the feature itself, and for the care with which it has been introduced. Through the Kings, the Consuls, the Republic, we are brought to the Empire, first under Pagan, subsequently under Christian influences. For all these, abundant illustrative references and extracts are offered from the most varied sources. Among ancient writers, Greek as well as Latin authorities are cited, and the results of the increased and increasing study of Epigraphy are woven into the body of the work. Thus we find ourselves referred to the tables of Osuna, Malaga, and Salpensa, published first by Berlenga, and afterwards by Hübner, disputed by Laboulaye, and defended with great learning by Charles Giraud and others. A yet more recent instance of the value of this class of illustrations, as well as of the keen outlook kept by Prof. Rivier, is noticeable in his reference under the head of Industrial Legislation, Mining Law, and the question of monopolies, (§ 114) to the *Lex Metalli Vipascensis*. Discovered in 1876 in the mine of Algaes, in a remote corner of Portugal,

near the town of Aljustrel, from which the Table itself is more commonly known as the Table of Aljustrel, this very interesting inscription has also been the subject of lively discussion. First published by the late distinguished Portuguese epigraphist, Augusto Soromenho, in an official report made in 1877 to the Minister of the Interior, and subsequently by Hübner, Bruns, Flach and Re, discussed in our own country by the Royal Society of Literature, in conjunction with the equally interesting Wax Tablets of Pompeii, the Table of Aljustrel has quite recently formed the subject of a fresh monograph by a brother Academician of Soromenho, Senhor Estacio Da Veiga, and which should find a place in M. Rivier's next edition. This last treatise, printed as a memoir presented to the Royal Academy of Sciences of Lisbon, and published by the Academy in 1880,* is in point of fact an essay in vindication of the claims of its author to have been himself the real discoverer and original interpreter of the Inscription. It is, therefore, to some extent a work of polemics, and of that feature of Senhor Da Veiga's work, we need only here say, that he appears to make out a good case. The two men, both ardent Archæologists and Epigraphists, were clearly at work upon the new treasure, the moment its discovery was announced by the Directors of the Trans-Tagus Mineral Company, on whose works it was found. It seems probable that Senhor Da Veiga had the actual first intimation of the find, and that he went at once to the spot, made all due investigation into the circumstances of the discovery, and set to work immediately upon the reading of the inscription. What we are concerned with here, however, looking upon the

* A Tabula de Bronze de Aljustrel, lida, deduzida e commentada em 1876. Memoria apresentada á Academia Real das Sciencias de Lisboa, por S.P.M. Estacio Da Veiga, Socio correspondente da mesma Academia. Lisboa. Typographia da Academia. 1880.

Table of Aljustrel as one of the latest aids to our understanding of the Industrial and Social Legislation in the Provinces of the Empire during the borderland between the first and second centuries of our Era, is the substantial identity between the views of the contending parties. There are, of course, minor points of exegesis in which Senh. Da Veiga takes a different line from Senh. Soromenho. But these are simply differences between two scholars, such as are always to be expected, more or less, in questions of Epigraphy or Palæography. Broadly speaking, there can be no doubt of the light which is thrown by the Aljustrel Inscription upon the rigid system of caste, of monopoly, and of regulation of life and labour, under which men lived in the mining districts of the Empire. It is quite clear, as was remarked by Mr. C. H. E. Carmichael, M.A., in the Paper read by him before the Royal Society of Literature and now in press for the forthcoming *Transactions*, 1881, that "everything pertaining to the district (the *Conventus Juridicus Pacensis*) was under the administrative direction of the *Procurator Metallorum*," and that "not the very smallest handicraft could be plied within his jurisdiction without his leave." This, it may be said, was truly characteristic of Roman rule under the Imperial system. Spontaneity was gone. Individual life, in the sense understood by those who were ere long to be the invaders and conquerors of the Empire, was also gone. There only remained a vast administrative machine, the working of which was almost automatic. It is easy to understand how, when a Province was left derelict, as Britain was, though for a time the machine might go on working from its own impetus, there was no intelligent hand left to guide it, and a collapse became only a question of time. "Great Rome," as Cardinal Newman has said through one of the characters in his singularly vivid

Callista, a Sketch of the Third Century, "Thou art first, and there is no second!" The sentiment underlying this apostrophe seems to us to be true in other ways than that which was probably present to the mind of the writer. It carries also, we think, the meaning that there was nothing to take Rome's place, if Rome withdrew her guiding hand. And this is what we have been led to insist upon, through our consideration of the Table of Aljustrel. There is, however, still another point connected with the light thrown upon Roman Law and Roman History by the science of Epigraphy to which we desire to draw attention, viz., the Tablets of Vöröspatak, in Transylvania, cited by M. Rivier at § 158, under the head of *Negotia*. To the references there given, the learned author may add, in a future edition, a very clear account of the Tablets, and of the controversies to which they have given rise, by the late Rev. John Kenrick, M.A., F.S.A., in a *Selection of Papers on subjects of Archæology and History communicated to the Yorkshire Philosophical Society* (London and York, 1864). Like the Table of Aljustrel, the Transylvanian Tablets are children of the nether world, relics of Roman mining enterprise in opposite ends of the Empire. They have passed through a hot contest on the question of authenticity, but they have come out, we certainly hold with Massmann and Kenrick, with their character all the better avouched. The *cui bono* argument is well applied by Mr. Kenrick to the hypothesis of forging, and the most recent discovery of Roman Wax Tablets,—those found in the house of L. Cæcilius Jucundus at Pompeii in July, 1875,*—

* Fully described in the Elaborate Monograph of Sig. De Petra (*Le Tavolette Cerate di Pompeii*. Roma: Tip. Salviucci. 1876), the Pompeian Tablets have also been the subject of a very able critical dissertation by M. Caillemier, Dean of the Faculty of Law in the University of Lyons, in a Paper printed in the *Nouvelle Revue Historique de Droit Français et Etranger*, Paris, for July-August, 1877. M. Flach's valuable contribution to the literature which has gathered round the Table of Aljustrel also appeared in the pages of the same Review, before its separate publication. (Paris: Larose. 1879).

affords ample confirmation of the use of such Tablets for the preservation of matter which would be evidence in Court. Cæcilius Jucundus was, we hold, on the facts before us, not only an *auctionator*, but also an *argentarius*, and under certain circumstances bound to bring his Tablets (his books, as we should say) into Court. Hence, no doubt, the care with which they were stowed away, a care which has been the means of preserving them to our day, and showing us something more of the ever interesting subject of life under the shadow of Vesuvius, just before the last days of Pompeii. The value of such auxiliary studies in throwing side-lights on Law and History cannot be doubted. We may mention, as regards the Tablets of Pompeii, that their commentator, Signor de Petra, has felt justified, on the strength of the statements contained in one of the Tablets, in altering the received date of the consulship of L. Annæus Seneca, and L. Trebellius Maximus Pollio, the latter of the two being the *eponymus* of the *S. C. Trebellianum*. And of the Transylvanian Tablets it may be recorded that they illustrate, by their conformity to it, a special form of binding ordered under Nero as a protection against forgers, and mentioned by Paulus, *Sententiæ*, v. 25, § 6.

We have not much space now left within which to set out other points of interest arising for discussion in the pages of Professor Rivier's excellent manual. We must not, however, omit to mention that, besides the introduction to Roman Law, properly so called, the general value of the work is enhanced by the publication therein of an Inaugural Lecture, and of two Addresses on Roman Law delivered by Professor Rivier as Rector of his University in 1874, and as Pro-Rector in the following year. In each of these will be found passages full of suggestiveness, and susceptible of profitable development by the reader. The treasures of Roman Jurisprudence are treasures to which we are all in some sense heirs, for they

grew, as M. Rivier points out, with the growth of the Empire, that is to say, for all practical purposes, they became world-wide. And the sense of their value never perished utterly out of the memory at least of Continental Europe, as M. Rivier has himself elsewhere shown in his interesting sketches of Mediæval Roman Jurists, Bishops, Diplomats, Statesmen, and Professors, such as Jacques de Revigni, Bishop of Verdun; Petrus de Bella Pertica, Bishop of Auxerre, Chancellor of France; Claude Chansonnette, Jurist of Metz, *Institutionum paraphrastes doctissimus*, Professor at Basle and at Vienna; Etienne van der Straten, Councillor of Brabant, and others *quos perscribere longum*. The close relation in which the works of Messrs. Holland and Shadwell and of Professor Rivier stand to each other will, we hope, have been made patent in these pages. They both unlock to us in their several ways that storehouse of scientific jurisprudence of which the keen satirist Rabelais could only find these words of the highest praise,—“au monde n’ya livres tant beaulx, tant aornez, tant elegans comme sont les livres des Pandectes,”—while our own Sir Matthew Hale declared that “the true grounds and reasons of law were so well delivered in the Digests that a man could never understand law as a science so well as by seeking it there.”

IV.—THE PRACTICE OF QUARANTINE.

THE Colony of Victoria appears to have been aroused to a certain pitch of excitement last June, on account of some unfortunate mistakes committed by two important executive officers, the one the Health Officer of Melbourne, the other the Chief Secretary of the Colony. It seems that the steamship *Ocean*, inward from Hong Kong, with many hundred Chinese passengers on board, arrived at Port Jackson. Small-pox had previously broken out among the Chinese inhabitants of Sydney; the vessel was therefore placed in Quarantine for a few days, and then suffered to proceed to Melbourne. All Chinese ports had however been proclaimed to be "infected places" by the Governor in Council, in virtue of the "Act to consolidate the law relating to public health" of 1865 (Vict. Acts, No. 264), and an order by the Governor in Council further directed that in consequence of small-pox being at Sydney, New South Wales vessels should be visited by the Health Officer in Hobson's Bay. It was under these circumstances that the *Ocean* arrived at Melbourne. The Chief Secretary thereupon obtained a "Cabinet Memorandum" directing the Health Officer to place her in Quarantine. This, as we shall see, was Fault No. 1. The "Cabinet Memorandum" was by some means delayed, and the Health Officer, oblivious of the Governor's Proclamation and of the Order in Council, and assuming a judicial rather than a ministerial capacity, cleared the vessel in the ordinary way, and gave her free pratique. This was Fault No. 2. Both officers were wrong: the former for issuing his *lettre de cachet*, a document as unnecessary in fact, as utterly void in law; the latter, for neglecting to carry out the lawful orders of the Governor in Council, and thereby violating his duty to a very considerable extent.

As a matter of fact, however, no great harm was done. The "Cabinet Memorandum" operated to remedy, though in an unauthorised manner, the neglect or misapprehension of the Health Officer, and the crew and passengers of the vessel were called upon to undergo no unanticipated detention. The point to which it is desirable to draw attention is the question of principle only. Quarantine undoubtedly is a species of imprisonment, inflicted on the innocent as well as on the guilty; and it is, on account of the detention of vessels, a serious item of debit in the financial accounts of merchants, shipowners, and the commercial class generally. Quarantine should therefore be applied, not rashly, nor ignorantly, but with all due precaution, so as to conciliate respect for the liberty of the subject, with the carrying out of the legal provisions governing it, whether they be based on Statutes or on Orders in Council. The instance which we have criticised in the practice of our Australian brethren will, we hope, be the last case of excess of zeal or default of knowledge that we shall hear of from that quarter. Among us, fortunately, in the mother country, the necessity for enforcing Quarantine is rare, and seldom occurs in actual practice. Our Quarantine enactments were consolidated by 6 Geo. IV., c. 78, and that Act, with some few modifications made by Statute in the reign of Her present Majesty, is still the law. Similarly, with the exception of an Order in Council of the 22nd March, 1879, it is necessary to refer for instruction as to the carrying out of our Quarantine practice to several Orders in Council of the year 1825. Concurrently with our Statute Law the Common Law of this realm deems it a misdemeanour, punishable with fine and imprisonment, to expose a person labouring under any infectious disorder in a public place.* Again, old text books give us the form of the writ *de leproso amovendo*, by

* *R. v. Vantandillo*, 4 M. and S. 73; *R. v. Burnett*, *Ibid.* 272.

which, when leprosy prevailed in this country, a sufferer from that very contagious and alarming malady was removed from society and placed in a Lazar house or lazaretto. The memory of our mediæval lepers still lingers in such place-names as Burton-Lazars, and there is a chapel in Knightsbridge, still in use, the survival of what was once a Lazar house. In all cases of the enforcement of Quarantine, whatever be the nature of the infectious disease rendering it necessary, as in the similar questions of noxious trades, common-lodging houses, disorderly inns, and common nuisances, the consideration is always one of public police and economy. The regulation and due order of a State requires that individuals should not only abstain from acts of violence, but also should conform their general behaviour so as not to prejudice the health or propriety of others. But, as we have already remarked, the practice of Quarantine in this country has been little known of recent years.

The sad experience of the yellow fever in the United States of America has rendered our Transatlantic cousins unhappily far more conversant with the practice than ourselves. And from their experience we may undoubtedly gain much information. In the United States the power of a City or Local Board in matters of health is very great. Thus it may declare what places are infected, or what persons or things are likely to prove contagious. A Quarantine is a judgment affecting the status of a place, and no authority can review the decision of the Board. The decision is *ex parte*; no one can offer evidence that the place in question is not infected, nor can the inhabitants appear before the Board and contest the finding. The municipal authorities have exclusive jurisdiction, and can proclaim and carry out Quarantine at will, against any other place. The charter of nearly every city provides for its extensive sanitary powers, but, apart from that, all

reasonable regulations passed by a local Government to carry out Quarantine, within the scope of the authority of the State from whence it derives its power, have the force of law.* The exercise of this power is absolute save in the case of the absurdity, frivolity, or unreasonableness of the regulations.† But notwithstanding this despotic authority of the Local Boards the courts interfere but very sparingly, as they consider that the question of health should be paramount, and that the local authorities are the best judges of the expediency of establishing a Quarantine against the infection of a particular place which threatens their city, whether such infection is likely to be introduced by persons or by goods. The Federal Government has determined that it is the individual State Government which is best adapted to guard the health and life of each of its own citizens and fittest to undertake the management of all his domestic, as distinguished from his political, necessities and requirements.

In 1879 the serious epidemic at New Orleans was the immediate cause of the passing of an Act to establish a National Board of Health for the whole of the United States. By virtue of this Act a National Board consisting of eleven members was appointed. The President of the United States, with the approval of the Senate, has the power to appoint seven of these gentlemen, of whom not more than one may be sent from any one State. To these are added one medical officer of the army, one medical officer of the navy, one medical officer of the marine hospital service, and one officer from the department of justice. Their duties are to frame all rules and regulations necessary for carrying out the above Act, and to make special examination and investigations at any place or places within the United States, or at foreign ports, as they may deem best,

* Mayor of Yuille, 3 Ala. 137.

† *Jones v. Richmond*, 18 Gratt. 517; *Ferguson v. City of Selma*, 43 Ala. 309.

to aid in the execution of the Act and the promotion of its objects. They also obtain information upon all matters affecting the public health, and advise the several Departments of the Government, the Executives of the several States, and the Commissioners of the District of Columbia on all questions submitted by them, or whenever in the opinion of the Board such advice may tend to the preservation and improvement of the public health. Being thus charged with the important duty of co-operating with, and aiding, State and Municipal Boards of Health in preventing the introduction of contagious or infectious diseases into the United States from foreign countries, and into one State from another, one of the first attempts made by the National Board was to endeavour to secure co-operation from the several State and Municipal Boards. For this purpose it suggested that the various local rules and regulations should be as uniform as possible, and drafted "precedents" of rules which might easily be adapted to each particular State or Municipality. These may be divided into five sections, viz. : Rules and regulations to be adopted and observed :—1st. At all ports in the United States which are or may be designated as Quarantine stations. 2nd. For securing the best sanitary condition of steamboats and other vessels, including their cargoes, passengers, and crews going from any port of the United States where yellow fever exists, to any other port or ports in the United States. 3rd. For securing the best sanitary conditions of railroads, including their station-houses and road-beds, and their cars of all descriptions, freights, passengers, and employés coming from any point where yellow fever exists. 4th. By the health authorities of a place free from infection having communication with a place dangerously infected with yellow fever. 5th. When yellow fever is reported or suspected to exist in any town or place in the United States.

It will be observed, that the first of these sections alone refers to Quarantine for any or every infectious disease, while the application of the latter sections is limited to yellow fever; but it is patent that the scope of these latter sections could be extended, in case of necessity, to meet any contagion whatsoever. The result of the practical experience of the sanitary authorities of the United States appears to be that there are two great difficulties in destroying the vitality of the germ of yellow fever—first, in bringing the disinfecting agent into actual contact with the germ; and, secondly, to avoid injuring or destroying other things which should be preserved. When the germ of yellow fever is dry, or partially dried, no gaseous disinfectant can be relied on to destroy it. It must either be moistened or subjected to a dry heat of not less than 250° F. to obtain security. Further, in disinfecting or destroying infected clothing and other moveable articles, care should be taken to move them as little as possible while dry. Before disturbing them they should be moistened either with a chemical disinfecting solution, or with boiling water, in order to prevent the diffusion of dried germs in the air in the form of dust. With respect to the disinfecting of ships, or large buildings, the opinion of the United States authorities is more hesitating. They are aware of the difficulty of destroying the vitality of dried germs, and suggest the experiment of thorough scrubbing and moist cleansing, to be followed by the fumes of burning sulphur at the rate of 18 ounces per 1000 cubic feet of space to be disinfected. Again, it has been suggested by them, that the application of a temperature as low as zero in a ship for a few hours, might destroy or render harmless the infection. They strongly advise the use of sulphate of iron, carbolic acid, fresh quick lime, fresh charcoal powder, chloride of zinc, chloride of aluminium and permanganate of potash as disinfecting principles.

The result of the modern Quarantine experience of the New World cannot but prove useful to ourselves, our Colonial possessions and dependencies, and to other Nations. The barbarous Quarantine of the dark ages should no longer be permitted to linger, as it unfortunately still does in some countries, where the discoveries of science and the civilised means for controlling infectious or contagious diseases are ignored. The practice of Quarantine should be assimilated to common sense; it should everywhere mean, not in theory, but in practice also (if necessary), that system which, in the well-chosen terms of the National Board of Health of the United States (in referring to Maritime Quarantine), is designated "the administration employed to determine the presence or absence of the causes of contagious or infectious diseases in vessels arriving at a port, and the securing, if present, the removal or destruction of such causes, and does not imply detention for any specified time, nor for more time than is necessary for the above purpose."

SHERSTON BAKER.

V.—SELECT CASES. (1). SCOTTISH.

By HUGH BARCLAY, LL.D.

Ship—Contract—Lloyd's Register.

According to rules framed before 1872 certain requisites were necessary for an "awning-decked" vessel to be registered in Lloyd's. A vessel was registered in 1872. In 1875 and 1876 these rules were altered, and further requisites made necessary for registration. In 1877 the vessel was deprived of her registration for non-compliance with the new rules. The owners raised an action of damages against the association for their vessel being deprived of her registra-

tion: *Held* that, the facts averred did not imply a contract, and the defenders assoilzied. Per Lord Justice Clerk (Lord Moncreiff): "Lloyd's Association is not a trading company dealing or trading in the registration of vessels, but is an association of merchants, shipowners, and others interested in shipping, whose main object is to obtain an accurate classified list of the mercantile shipping of the United Kingdom and of the foreign vessels trading thereto." "As the reputation for accuracy of the register of this association stands very high, it is an object of material importance to shipowners to obtain their vessels classed therein. But the position of this association is very different from that of an association or company holding itself out as ready for its own profit to register all and sundry vessels that may come to it. There is no contract between the association and the outside public as there would be in the case of such an association or company. Certain conditions are laid down by the defenders' association which must be complied with by the owners of vessels which are to be classified and registered by them. But that does not make a contract with the public. It is a notification and nothing else of certain requisites which the association insist shall be fulfilled before they will register a vessel." 15 March, 1879. *Henderson v. Lloyd's Association*, 6 S.C., 835.

Arrestment ad Fundandum Jurisdictionem.

An action was instituted in the Court of Session at the instance of London merchants against a foreign mining company having their office in London, founded on arrestments laid in the hands of a gentleman in Edinburgh. This gentleman, as a creditor of the company defenders, holds bonds payable to the bearer in security for advances made to the company: *Held* that the obligation on the part of the security holder to account to the company defenders for a possible balance, was an arrestable interest, though it was uncertain whether there would be any surplus after satisfying the advances. Per Lord Justice Clerk: "I have arrived at the decision with reluctance for, I think, that jurisdiction founded by arrestments is a fiction which ought not to be stretched. But for the authorities quoted I should have thought it very doubtful whether this arrestment was effectual." "I think that the cases show that the right to call a person to account where such a right clearly exists, even

though the balance is not ascertainable, is an arrestable interest." 15 March, 1879. *Baines v. Compagnie Générale des Mines d'Asphalte*, 6 S.C., 846.

Inhabited House Duty—Exemptions.

Held, that a hall and accessories, the property of a coal exchange company, though let out for hire for temporary purposes, was entitled to the exemption under Act 1878, s. 12, sub-section 2. Per Lord President: "The exemption is now complete and may be generally stated as this, that all premises which are not dwelling houses but are occupied for purposes of trade, or for exercising a profession, business avocation, or calling from which profit is deriveable, are exempt from the duty, even though occupied at night by a caretaker who dwells in them." "Nor do I think that it affects the question except to strengthen the case of the company, that they occasionally give the use of their premises for hire for other temporary purposes. Nothing is more common than for persons to occupy premises for one primary object which they occasionally hire or let out for a totally different but temporary purpose." "That does not interfere with the fact that the company is carrying on in their premises the business of a coal exchange." 18 March, 1879. *Glasgow Coal Exchange Company v. Solicitor of Inland Revenue*, 6 S.C., 850.

Bankruptcy Act (Scotland), 1856—Duty of Trustee to Report on Conduct of Bankrupt Without Fee.

The 146th section of the Bankruptcy Act, 1856, requires a bankrupt to produce a report from the trustee on his conduct before applying for his discharge. A bankrupt asked such report, which the trustee declined to give unless on payment of a fee of £5 5s. The bankrupt complained to the sheriff; the sheriff found that he had no jurisdiction to compel the trustee to fulfil a statutory duty. The appeal was taken to the Court of Session: *Held*, that the petition to the sheriff was competent, and that the trustee was not warranted by statute or by practice to charge a fee. Per Lord President: "A business man just takes the bad with the good, submits to a casual loss now and then, and strikes the average at the year's end. There is, therefore, nothing special in the averment of the trustee here that he has not received, and is not likely to receive, any remuneration in the sequestration. That will not justify a

charge for which there is no warrant either in the statute or in practice. I cannot, moreover, leave this case without adding that it would be most inexpedient in my opinion to sanction this charge. It is a charge made against a person having no means, and as a condition of his being discharged from his liabilities I cannot imagine anything more liable to abuse or more likely to lead to collusion between bankrupts and their trustees. Were a fee of this kind indefinite in its amount, and not entering the trustee's account in the sequestration, exigible from the bankrupt, there would be nothing to prevent its being graduated according to the nature and quality of the report delivered. Not only is the charge quite unwarranted, but it is a most improper charge for a trustee to have made." 18 March, 1879. *White v. Robertson*, 6 S.C., 854.

Public Health Act, 30 and 31 Vict., c. 101 (1867)—Public Well.

The Commissioners of Police in a police burgh, erected under the Act 1862, as local authority under the Act 1867, enclosed a well on private property which had been used from time immemorial by the public. The proprietor sought an interdict. The Lord Ordinary (Adam) gave the interdict, observing "the clause proceeded on applies to wells which are the property of the public and not to wells which are the private property of other parties. He does not think that it was the intention of the Act to authorise the local authority to interfere with private property and to make such changes upon it as have been done." On an appeal to the Lower House, Lord Ormidale coincided with Lord Adam. The Lord Justice Clerk and Lord Gifford were of a contrary opinion and the interdict was refused. Per Lord Justice Clerk: "I am inclined to think that the section of the statute extends the right of the local authority to all wells used immemorially for such gratuitous supply, and that the long continued possession cannot be inverted by an application of this kind." The case was appealed to the House of Lords who affirmed the decision refusing the interdict. 8 March, 1880. 19 March, 1879. *Smith v. Commissioners of Police of Denny*, 6 S.C., 858; 7 S.C., 28 (H. L.).

Reparation—Road.

The driver of a pony-carriage on a dark night, driving without lights, knocked down a foot passenger on the carriage way of a public road: *Held*, liable in damages. Per Lord Justice Clerk: "I think the defender ought to have had lights. I do

not say there is an absolute obligation to have lights at night, but it is a question which should be taken. The night in question being a dark one there was an obligation on the defender to go cautiously and slowly. It is proved that he saw three ladies fifteen yards off but he did not call out to them or slacken his pace. On the whole proof I am compelled to come to the conclusion that there was fault on the part of the defender and no contributory negligence on the part of the pursuer. On a night such as this was, foot passengers are entitled to go on the broadest part of the road." 20 March, 1879. *Gibson v. Milroy*, 6 S.C., 893.

Bankruptcy—Reputed Ownership.

On the bankruptcy of a cab hirer a coachbuilder claimed a cab in the bankrupt's possession. The cab was let under a written agreement with the option of the bankrupt to purchase on certain conditions which had not been fulfilled. *Held*, that the principle of reputed ownership was not applicable where the possession was on a limited title under a fair and ordinary contract. Per Lord Justice Clerk: "No doubt the bankrupt was in possession of the cab, and it is said that the property must be presumed to be in him, unless the creditors were forewarned in some way that the cab was not the property of the bankrupt. English cases have been quoted, as showing, that unless a custom of hiring be established, which the creditors may be reasonably expected to know, the bankrupt must be held the owner. As a general rule in Scotland, where there is a distinct and definite contract, the doctrine of reputed ownership will not apply. If the transaction be one in ordinary practice in commercial dealings, the limited title will be all which a bankrupt has or can transmit to his creditors." "There is no ground for saying that the bankrupt had ever possession of this cab on any other footing than stated in the memorandum of agreement, and that being a limited title, terminable on bankruptcy, the property is in the owner." Several English decisions were cited. 13 May, 1879. *Marston v. Kerr's Trustee*, 6 S.C., 898.

Superior and Vassal—Restrictions on feu.

A feu charter prohibited "any nauseous chemical operations on the ground, noxious or noisy manufactures, or anything which may be a nuisance, or may occasion disturbance to any of

the neighbouring feuars or proprietors." A feuair erected a large hall for cattle shows and sales. The superior objected and sought an interdict. The Court assailed on the ground that the amount of inconvenience was inconsiderable, and that the neighbourhood was already a great centre of the cattle trade. Per Lord President: "It is said that the selling of cattle within the building has the effect of making the road that leads to the building inconveniently crowded with cattle, and of interfering with the use of that road by foot passengers, &c. It is impossible to hold this as a breach of the restriction—that anything done on the high road can be connected with the building on the feu, so as to be a breach of the restriction against carrying on an operation or manufacture therein to the disturbance of the neighbouring feuars." "A road in the neighbourhood of any feu is liable to the occurrence of ordinary disturbance. They are often created by the inhabitants themselves. But no ordinary disturbance—no disturbance which is just the ordinary disturbance of the neighbourhood, and which is quite legal at common law—would be a violation of this restriction." 16 May, 1879. *Anderson v. Aberdeen Agricultural Hall Company*, 6 S.C., 901.

Mine and Minerals—Working beyond March—Measure of Damages.

In an action for damages for working coal beyond the lease: *Held*, as there was mutual error as to the right to the coal and entire *bona fides* on both sides, the measure of damages was the amount of lordship on the coal excavated at the rate paid by the defenders to the superior of the surrounded coal field *plus* the surface damage. Per Lord President: "The pursuer's coal has been worked out by the defenders, and therefore the pursuer is entitled to its value, whatever that may be found to be. What he is entitled to is the value of the coals extracted. It is contended on behalf of the pursuer that he is entitled to all the profits made by the defenders in consequence of their having worked out his coal without any allowance for capital charges. I am not prepared to affirm that proposition." "It is just the value of the coal *in situ* unwrought in the mine at the point of time when the working began." 20 May, 1879. *Livingstone v. Rawyards Coal Company*, 6 S.C., 922.

Charter party—Demurrage—Lay days.

Held: Lay days are to be computed by days or parts of days, not by hours. Per Lord President: "It is rather an important circumstance that the proposal to count lay days by hours is a novelty. I am not aware that it has ever been previously suggested, and in administering law of this description we are bound to have regard to custom more than in almost any other. I do not see any distinction between lay days and days of demurrage in the matter of counting, and with regard to demurrage we have an express authority in the case—*Commercial Steamship Company*, 10 L.R., Q.B., 346. My own impression corresponds with the decision in that case. Therefore I have no hesitation in adopting the rule laid down by the Court of Queen's Bench. I do so the more readily that it would be extremely unfortunate if we were led by considerations of legal principle, as we might be, to lay down a different rule. It is a sound rule itself, and as the learned judge says, by far the most convenient." 27 May, 1879. *Hough v. Athya & Son*, 6 S.C., 961.

Reparation—Damnum fatale.

Commissioners obtained an Act authorising construction of water works, which contained a provision that the Commissioners should make good to the proprietors of the lands situated below the site of one of their reservoirs, all damage which might be occasioned "by reason of or in consequence of any bursting or flood or escape of water from the reservoir." After an unprecedented rainfall damage was occasioned by water flowing from the reservoir through the bye-wash or waste weir: *Held* (Lord Justice Clerk dissenting), that the reservoir having in no way been proved to be insufficient or to have aggravated the flood, and so contributed to the damage suffered, the Water Commissioners were not liable. Per Lord Ormisdale: "Nothing more was intended by the provision than to entitle the pursuers to redress against any damage or injury which they would not have sustained if the defenders' reservoir and relative works had never existed." "It appears to me that the preponderance of the proof being greatly and unmistakably on the side of the defenders, it must be held as established that no greater quantity of water flowed or passed from the reservoir by the weir or bye-wash down to the pursuers' property than would have come down from natural causes if no reservoir had existed." Per Lord Justice Clerk: "The only thing that appears to me certain

is that the result with the reservoir there must have been different from what it would have been if the reservoir had not been there." "The Statute makes it an absolute condition of the right to make the reservoir that damage arising from it shall be paid without inquiry as to the contingencies of which your lordships speak." The majority cited the case in the House of Lords, 3 March, 1864, *Tennant v. the Earl of Glasgow*. Lord Justice Clerk cited the case, *Nichols v. Marsland*, 2 Ex. Div. L.R. 18. 5 June, 1879. *Countess of Rothes v. Kirkcaldy Water Works Commissioners*. 6 S.C., 974.

Companies Clauses Act, 1845—Statutory Mortgages.

A harbour company under the statute incorporating them, was authorised to borrow money on the credit of the rates or duties. This the commissioners did on the statutory form without any obligation to repay principal. A subsequent statute incorporating the Act 1845, repealed the prior Act reserving the rights of creditors. In an action by bond-holders for payment of the principal sum: *Held*, that they were entitled to decree of constitution of their debt. Per Lord Justice Clerk: "I am aware of the difficulty or perhaps illegality of attaching the statutory undertaking—the harbour—as made and established under the Acts in question, or anything strictly belonging or pertaining to that undertaking and forming part of it. But I cannot assume that there is, or can be, nothing else belonging to the defenders which may, if necessary, be made the subject of diligence at the instance of the pursuers in payment or satisfaction of the decree to be obtained in this action. It is scarcely conceivable that no such property or effects exist or may not come to exist, nor is it necessary to say such property or effects are or may be. If the pursuers, supposing they get decree, should attempt to enforce it against property or effects which cannot competently be attached and made available by them in payment or satisfaction of their debt, the defenders will have it in their power to restrain them." Per Lord Gifford: "A subsisting security for a debt implies a debt. If there was no debt there would be no security and the subsistence of the debt may often be very well and very easily proved by the deed creating a security for it, although that deed may contain no words of obligation whatever." Numerous English decisions were cited. 5 June, 1879. *Haldane's Trustees v. Elgin and Lossiemouth Harbour Company*, 6 S.C., 987.

Reparation—Negligence.

A man entered a public-house desiring to enter a lavatory where he had been once before, but passing its door, he opened a door of a sunk cellar, whereby he suffered serious injuries: *Held* the publican was liable in damages assessed at £25. Per Lord Justice Clerk: "If this had been a solitary instance of an accident in this place I would have thought the case very narrow. But then we have two facts, *first*, before this accident there had been a prior one of the same nature, and *second*, that the defender seemed so alive to the danger that he took the precaution of keeping the cellar door always locked. These two things show, 1st, that this was a dangerous place; 2nd, that the mistake was a natural one; and 3rd, the defender was perfectly conscious of the danger. Therefore, although I do not disguise the fact that the case is a narrow one, and but for the elements I have noticed, would have been decided the other way, I think the pursuer is entitled to prevail." 7 June, 1879. *Cairns v. Boyd*, 6 S.C., 1,004.

Reparation—Negligence.

A proprietor let the fire-clay on his lands, with leave to the tenant to erect houses for his workmen and make roads. A workman on going from his house to his work on a dark morning, by a road within twelve feet of an unfenced quarry, fell therein and was injured. In an action against the proprietor: *Held* (*dub.* Lord Gifford), that he was liable. Per Lord Ormidale: "The cottages and brickwork were on the defenders' property, and as it must be taken that rent or other consideration was given to the defenders for the use of the cottages, they were bound on their part to see that the inhabitants of the cottages and their visitors had a safe and reasonable access to and from them." "I think it was the duty of the defenders to have fenced the quarry-hole, and not to have left it as a trap or pitfall adjoining the path or road in question, and that having neglected to discharge this duty, they are answerable for the consequences." Per Lord Gifford: "The present pursuer is one of the workmen of the tenant, whose only right to go to this field at all arises from his employment by the tenant." "The tenant, I think, was bound to fence his own cottages and the roads to them, so as to make them safe for his own workmen, and I have a difficulty in

seeing how the defenders become liable to make safe roads to cottages which they did not build, which they were not bound to maintain, and which, I suppose, the tenant might remove at his pleasure." "Whilst I have stated my difficulty I am not prepared to dissent from your Lordship's judgment." Many English cases were cited. 17 June, 1879. *McFeat v. Rankin's Trustees*, 6 S.C., 1,043.

Statutory Trustees—Powers.

Parliamentary Commissioners for supplying a city with water unsuccessfully opposed a Bill in Parliament which superseded their trust: *Held*, not entitled to charge the costs against the trust funds. Per Lord Justice Clerk: "It is not the part of the judge to criticise the Acts of the legislature, but I do not I think transgress due limits if I say that it is unfortunate that our public bodies and our courts of law should be put to solve such difficulties, when a little ordinary care and enquiry on the part of those by whom such English Acts (35 & 36 Vict., c. 91) are framed would prevent them from arising." "It is not within the power of such governing bodies to promote Bills in Parliament for enlarging their powers, for such a proceeding is avowedly beyond the existing limits of their trust, however beneficial the proposal may be for the public interest." "But a different result might be arrived at if the object were to remove obscurities in construction, or practical difficulties in administration." "It has been decided that where the governing body has opposed Parliamentary proceedings, the cost of doing so may in some cases be charged on the funds under their administration." "Thus in the case of *Brighton*, water commissioners were found entitled to charge against their rates the cost of a successful opposition to a drainage scheme which had a tendency to injure their works, and I apprehend the same principle would apply to all similar proceedings taken in resistance to measures plainly at variance with the due and proper discharge of their duty or the integrity of their property or privileges." "When the proposal originates from within, the ratepayers should be left to maintain their own interest in their own way, and at their own expense; nor is it any concern of the governing body to interfere between the ratepayers and Parliament. It is no part of their trust administration." "It will be very difficult to shew that opposition to a measure which Parliament has declared to be beneficial was

due administration of the trust." Many English cases were cited. 17 June, 1879. *Perth Water Commissioners v. McDonald*, 6 S.C., 1,050.

Reparation—Road—Negligence.

In an action at the instance of an old woman who, when crossing a street in daylight, was knocked down and injured, against the driver of the vehicle: *Held*, liable in damages. Per Lord Justice Clerk: "Where the driver of a vehicle drives over a person in broad daylight I think that there is the strongest presumption both in fact and in law that the driver was in fault." "It is suggested that the whole duty of the Defender was to keep his own side of the street, to call out to any person he saw in the way, and then drive on. I can give no countenance to such a view of what a driver is bound to do. Here we have, on the one hand, a passenger doing what she was entitled to do—crossing the street—and, on the other hand, a driver who could quite well have pulled up if he had wished." 19 June, 1879. *Clerk v. Petrie*, 6 S.C., 1,076.

Partnership—Latent Partner—Notice of Dissolution.

B., a latent partner of a business carried on by A. in his own name, retired, but gave no notice of the dissolution of partnership. A., six months after, issued circulars to all the creditors and customers that he had assumed C. as a partner, and that the business would be carried on under the firm of *A. & Co.* An action was brought against A. by the trustee on the bankrupt estate of A. & Co., for the balance of debts of A. & Co., not covered by the assets of the firm: *Held* that the circular of A. was sufficient notice that B. was not a partner of A. & Co., and hence was not liable. Per Lord President: "I do not think it is alleged that anyone remained ignorant that what was there publicly announced by the circular or that there was any creditor of the old firm who can say that he was not made personally aware of the change that was announced to have taken place." "The pursuer is trustee in a sequestration, and as such represents the whole creditors. He cannot as trustee represent a class of creditors, and he does not profess to do so." "It is quite impossible in a question of this kind to combine creditors as a class, and make them all entitled to go against a latent partner because of his not having advertised out, without considering the circumstances in which each particular creditor

is placed and the means of knowledge which he either possessed or had at his command—therefore I think the trustee in the sequestration can never have a good title to pursue an action of that kind." Many English cases were cited. 20 June, 1879. *Mann v. Sinclair*, 6 S.C., 1,078.

Promissory Note—Stamp Laws.

A document was held to be a promissory note. The document was unstamped. The Commissioners of Inland Revenue stamped the writ with an adjudication stamp and with an agreement stamp: *Held* that the Commissioners had no power to stamp a document which was prohibited by law from being stamped after execution, and hence it was ineffectual. Per Lord President: "We are all familiar with the rule prohibiting bills of exchange and promissory notes from being stamped after being drawn and executed, and unless the Act repeals these we cannot hold that these writs fall under section 18 of 33 and 34 Vict., c. 97." "So far from repealing these rules, section 53 confirms them." 27 June, 1879. *Vallance v. Forbes*, 6 S.C., 1,099. (A similar decision was given same day, *Blyth v. Forbes*, 6 S.C., 1,102).

Income Tax—Residence in Great Britain.

A master mariner was absent in command of a British vessel for an entire year. During that time was tenant of a dwelling house in Scotland, in which his wife and family resided: *Held* that Great Britain was his residence within the meaning of the Statute, and that he was liable to be assessed for income tax. Per Lord President: "He has no other residence but Great Britain. The circumstance that he has been absent from the country during the whole year, to which the assessment applies, does not seem to me to be a specialty of the least consequence. That is a mere accident. He is not a bit the less a resident in Great Britain because the exigencies of his business have happened to carry him away for a somewhat longer time than usual during this particular voyage." (The case of *Young v. Commissioners of Inland Revenue* was cited. 10 July, 1875. 2 S.C., 925). 28 June, 1878. *Rogers v. Solicitor of Inland Revenue*, 6 S.C., 1,109.

Bill of Exchange—Acceptance.

A bill drawn by A upon B and accepted by B, and C, the father of B, subscribed on the back. After a proof: *Held*, by the Lord Ordinary, that C was liable as an acceptor. From the

importance of the cause it was afterwards heard before seven judges, who held—1st, that C's signature was *not* a valid acceptance; and 2nd (*diss.* Lord Gifford and Lord Shand), that it did not create any collateral or cautionary obligation against him in favour of A, the drawer. The case was appealed and the judgment affirmed by the House of Lords. (The case is important as affecting the Mercantile Law Amendment Acts, and distinguishing between bills of exchange and promissory notes and the difference between the laws of England and Scotland on these writs). 1 July, 1879. *Walker's Trustees v. McKinlay*, 6 S.C., 1,132. In H.L., 14 June, 1880. 7 S.C., H.L., 85.

Public Company—Fraud.

A shareholder sued a company in liquidation for damages occasioned by his being induced to purchase shares by fraudulent representations of the directors: *Held* (*diss.* Lord Shand) that while the fraud of the directors would have been a relevant ground for reducing the sale and claiming restitution from the company, had the pursuer been able to tender restitution, it was not a relevant ground for claiming from the company damages arising from the wrong done by the directors. Per Lord President: "The contract has not been rescinded and cannot now be rescinded, and the consequence is logically inevitable that the pursuer remains a partner." "If the claim of the pursuer to be restored against the fraud of the agents of the company had been made whilst the company was carrying on business, the claim would have been directed against the corporation, and would have fallen to be satisfied out of the estate of the corporation." "But when the corporation is in liquidation, the corporate estate becomes exclusively appropriated to payment of those who are creditors at the commencement of the liquidation, which the pursuer was not." Per Lord Shand: "It appears to me to be no good reason against the competency of a claim of damages that restitution has become impossible. On the contrary I think an action of damages becomes competent if and when restitution has become impossible through an act or acts of the purchaser done, while in excusable ignorance of the fraud committed on him." Numerous English cases were cited. The judgment was affirmed in the House of Lords. 4 July, 1879. *Howdsworth v. City of Glasgow Bank*, 6 S.C., 1,165. In H.L., 12 March, 1880. 7 S.C., H.L., 53.

Public Company—Frauds.

An action was brought by a purchaser of bank stock for reduction of the transfer and for damages as having been induced to purchase by fraudulent misrepresentations by the officials of the bank stock, and to have his name removed from the Register, and the seller's name scheduled, the entry having made after the stoppage of the bank: *Held*, 1st, that he was not entitled to have the Register rectified, on the ground that although the company were not entitled to enter the petitioner's name on the Register after the stoppage, he was not entitled to have it removed because the seller was entitled to have the purchaser's name substituted for his own; 2nd, that the circumstance was proved that there was no fraud committed in the conduct of the sale; and 3rd, *separatim*, that the officials had no authority to bind the bank as brokers in the sale of stock. Many English cases cited. 4 July, 1879. *Howe v. City of Glasgow Bank*, 6 S.C., 1,194.

Husband and Wife—Insurance on Life.

Under an antenuptial contract the wife conveyed to the husband all *acquiritenda* during the subsistence of the marriage. The husband effected an insurance on her life payable "to her heirs, executors or assignees," six months "after her death." During her life he used the policy as a credit for advances made by the Insurance Company. By a general *mortis causa* settlement he conveyed his whole estate to trustees. He predeceased. In a competition between the widow and the trustees: *Held* that the widow was preferable to the policy with all bonus additions. 9 July, 1879. *Thomson's Trustees v. Thomson*, 6 S.C., 1,227.

Ship Register—Bill of Sale—Bankruptcy Acts.

A bill of sale of certain shares of a vessel followed by possession: *Held* effectually to vest in the purchaser the right of property, and which will not be affected by the subsequent sequestration of the seller while still registered as owner. Per Lord President: "The pursuer has a bill of sale framed in terms of the statutes; that bill is delivered in consideration of a full price. Following upon that he has the only possession possible by receiving his share of profits. It is difficult to imagine any right more complete short of absolute registration. Therefore if any effect is to be given to the 3rd section of the Act 1862,

I think we have the strongest case for giving it here. I am of opinion that against this trustee in bankruptcy this claim must receive effect, just as it must have received effect against the bankrupt himself when he was solvent. And I am satisfied that by adopting that construction we are giving the effect intended to the words of the statute." 12 July, 1879. *Watson v. Duncan*, 6 S.C., 1,247.

Public Company—Ultra Vires.

A banking company accepted shares in another banking company in security of a cash credit. In liquidation of the latter company, individual shareholders of the first company petitioned to have the company removed from the list of contributories on the ground that the acquisition of shares in another bank as securities was *ultra vires* of the directors. *Petition refused*. Per Lord President: "I think that the petitioners have no title to make such an application." "It seems to me that the business of banking consists to a very great extent in making advances of money on the security of such subjects as the bank might safely and properly acquire in property." "Whatever the company may regularly and legally, under their contract, acquire by purchase, it appears to me that they may with equal propriety and legally acquire as the subject of a security." 15 July, 1879. *Fraser, &c., v. City of Glasgow Bank*, 6 S.C., 1,259.

Ship—Bill of Lading.

In an action by the purchaser of oil against shipowners for loss by leakage of oil: *Held* 1st (*dub.* Lord Shand) that the onerous holder of a bill of lading could have no higher right than the shipper, by whose fault in providing insufficient casks the loss was caused. 2nd, that by the terms of the bill of lading the shipowners were not responsible for leakage not proved to have been caused by their fault. Per Lord President: "The shipowners are *prima facie* answerable for the loss. But of course, if they can show that this partial destruction of the oil or injury to the cargo is not due to their fault, but to the fault of the shipper of the cargo, then a very different result may be attained, and in this case the peculiarity of the pursuers' position, as lying at the very foundation of their case, is that the shipper was to blame, and that the fault of the shipper was the cause of the loss of the cargo." Numerous English cases cited. 15 July, 1879. *Craig & Rose v. Delargy*, 6 S.C., 1,269.

River—Salmon Fishing.

Held that a riparian proprietor on a private river who had the right of salmon fishing *ex adverso* of his lands was not entitled to improve a fishing-shot by removing massive boulders from the *alveus* of the river on his own side the *medium filum*, as it was impossible to foretell the effect their removal might have on the channel of the river and the interests of other riparian proprietors. 16 July, 1879. *Robertson v. Foote & Company*, 6 S.C., 1,290.

Public Company—Trustees.

Trustees and executors gave their agent instructions to complete their title, and he without further instructions sent their title to a banking company, and their names were placed on the Register. They afterwards gave mandate to their agent to draw dividends. A petition by the trustees to have their names removed from the Register on the ground that they never agreed to become partners in the bank *Refused*. 18 July, 1879. *McEwen v. City of Glasgow Bank*, 6 S.C., 1,315. A similar case on the following day where it was found that the general instructions given their agent did not authorise him to transfer the stock in their name, and that the transference had not come to their knowledge, and so their names were removed. Many English cases cited. 19 July, 1879. *Wishart, &c., v. City of Glasgow Bank*, 6 S.C., 1,341.

Principal and Agent—Stock Exchange—Non-disclosure by Principal.

A principal held liable to his agent in damages which he had incurred by reason of the concealment of a material fact of which the agent was ignorant. 18 July, 1879. *McKenzie v. Blakeney*, 6 S.C., 1,329.

Trust—Investment—Bank Stock.

Trustees under a marriage contract were authorized to invest in certain quarters—bank stock included. The trustees invested in the City of Glasgow Bank. *Held*, that they were entitled to have done so in any Scotch banks in good repute at the time, and so entitled in future of the bank to full relief from the trust funds. Many English cases cited. 19 July, 1879. *Cunningham v. Montgomerie*, 6 S.C., 1,333.

(2.) COLONIAL AND AMERICAN.

CANADA: COURT OF APPEAL: (FROM C.P.), JULY 8, 1881.—

*Regina v. Browne.***Extradition — Deposition — Foreign Indictment—(33 & 34 Vict., cap. 52, and 36 & 37 Vict., cap. 60 (Imp.)—31 Vict., cap. 94 (Dom.)**

The defendant was accused by the State of New York of complicity in a crime committed in that State, and was under indictment in the Foreign Court. Upon the application for extradition, the coroner who had held the inquest in the foreign State himself appeared, and proved his authority to do so, and by oral testimony proved the original depositions taken upon the inquest, which he then produced. A warrant was issued for the defendant's arrest by the District Attorney of the foreign State upon the finding by the Grand Jury of a true Bill for murder, but upon what evidence was not shown: *Held*, that the Canadian Act which enacts that upon the return of the warrant of arrest, *copies* of the depositions upon which the original warrant was granted in the United States, certified, &c., and attested upon the oath of the party producing them to be true copies, may be received in evidence, does not interfere with the enactments of the Imperial statute as to original depositions, and that the original depositions in this case were therefore properly admitted.

An accessory before the fact is extraditable, but an accessory after the fact is not. But there was sufficient evidence here to warrant and require extradition: *Held*, that the foreign indictment was not admissible as part of the evidence.—*Canada Law Journal*, July 15, 1881.

COMMON LAW CHAMBERS, JULY 13, 1881. *In Re Osler and Toronto, Grey, and Bruce Railway Company.*

Registration of Shares—Registration of Intermediate Transfer not Necessary.

O., being the holder of fourteen bonds of the Railway Company, issued on May 1, 1876, payable on January 1, 1881, with interest meanwhile half-yearly at six per cent. per annum, requested the Secretary of the Company to register the bonds under 38 Vict., cap. 56. This the Secretary refused

to do unless the intermediate transfers were produced and registered at the same time: *Held* (*per* Wilson, C.J.), that the Secretary was bound to register the bonds without the production or registration of the transfers, and the summons for a *mandamus* was made absolute, with costs to be paid by the Company.—*Canadian Law Times*—Occasional Notes—August, 1881.

[To same effect, *In Re Johnson and Toronto, Grey, and Bruce Railway Company*, also *per* Wilson, C.J., reported in *Canadian Law Times*—Occasional Notes for September].

SUPREME COURT OF PENNSYLVANIA. *Williamsport Gas Company v. Pinkerton.*

Law of U.S.A.—Coupons: Presentation and Demand.

There is no obligation on the holder of a coupon bond or coupon to present the same and demand payment within a reasonable time. He is not like the holder of a cheque or bill of exchange. *Per curiam*: The Corporation which issues a coupon bond is in the position of the maker of a promissory note, not of the drawer of a cheque or bill of exchange. There is no obligation on the holder to present and demand it within a reasonable time. The same rule applies to the coupons as to the bond. In fact, he may hold on to the coupons just as long as he can hold on to the bond, without requiring payment. The coupon is nothing but an acknowledgment of interest due, and is but an incident of the principal. It is attached to the bond and may be detached from it for the convenience of the holder. The possession by the Corporation is evidence of its payment. The banking house at which it was made payable were the agents of the Corporation, and the holder could not lose in any event by their insolvency. Judgment affirmed.—*Southern Law Journal* (Montgomery, Ala., U.S.A.), December, 1880.

NOVA SCOTIA: SUPREME COURT, JANUARY 8, 1881.—*Guilford v. Anglo-French Steamship Company.*

Master of Ship—[Quære, part-owner]—Wrongful Dismissal.

Plaintiff, in 1874, agreed with a number of Halifax merchants to subscribe four thousand dollars towards a steamship enter-

prise and assist in getting a suitable ship, provided he should be master. This was agreed to, and his wages were fixed at twelve hundred dollars. The company was incorporated in 1875 by Act of the Dominion Parliament, and the plaintiff received stock to the amount of his contributions. After running for some time it was found that the enterprise was sinking money rapidly, and in 1876 a new arrangement was entered into by which the plaintiff was to supply the ship with men and provisions for the passengers and crew, and sail her as commander for nine hundred dollars a month, afterwards increased to nine hundred and fifty. The ship had been originally accustomed to remain at St. Pierre forty-eight hours, but the time was afterwards lengthened to sixty hours by the company, yet the plaintiff insisted on remaining only forty-eight hours, against the express directions of the company's agents at St. Pierre, and was otherwise disobedient to the agents, and treated them with gross insolence, in consequence of which he was dismissed from the service of the company. *Held* (Young, C.J., *diss.*) that the dismissal was justifiable, that the plaintiff was not a part-owner of the ship, and could not exercise, independently of the corporation, any power whatever over the property of the company, having no interest whatever in the ship, but only in the stock of the company, and the case must therefore be considered as the ordinary case of master and servant. *Diss.* Sir W. Young, C.J.: While the plaintiff would have had no redress had he been in the ordinary position of a shipmaster dismissed by a majority of the owners, his position was that of a part-owner, and he was entitled to compensation. — *Canadian Law Times*, September, 1881.

[Some cases referred to in Desty's *Manual of the Law Relating to Shipping and Admiralty*, San Francisco, 1879, seem worth citing here in their bearing both on the judgment of the Court and the dissenting opinion of the Chief Justice. In section 51, *s.v.* Managing Owners, Mr. Desty has the following:—"Where the master is part owner, with entire control, he may sue in his own name." *Cawthron v. Trickett*, 15 Com. B.N.S. 754. "He is presumed to have no right to compensation for his own services." *Rennell v. Kimball*, 5 Allen, 205; *Smith v. Lay*, 3 Kay & J., 405; *Benson v. Heathorn*, 1 Younge & C., 326. Still Mr. Foard, *Law of Merchant Shipping*, 1880, quotes Abbott on *Shipping* to the effect that the master, being part-owner, is the confidential servant or agent of his co-owners].

AUSTRALIA: SUPREME COURT, VICTORIA.—*In Banco*, before Sir W. F. Stawell, C.J., and Stephen and Higinbotham, J.J. JULY 5, 1881.—*Famieson v. Robb*.

Foreign Judgment—Enforcing in Victorian Court—Validity.

Demurrer to replication.

The action was brought by the liquidators of the City of Glasgow Bank against the defendant to recover an amount due for contributions to the Company. The order for contributions was made by the Court in Scotland. The defendant pleaded, in effect, that the order was obtained without notice having been served upon him, and while he was resident beyond the jurisdiction of the Scotch Court, and was consequently wholly inoperative and void.

The plaintiffs replied, setting out that the Company was incorporated under an Act of the Imperial Parliament; that the defendant had signed the memorandum of the Articles of Association, and that under them and the Act it was sufficient for the liquidators to bring into the Court in Scotland a list of the names of the contributories, and that it was not necessary to give the shareholders notice.

To this replication the defendant demurred.

The Court *held* that the replication was good. If a person, knowing of a particular process, gave an express or a necessarily implied consent to that process, he could not be heard afterwards to say that it was contrary to natural justice to enforce that process against him. The defendant in this instance had, by agreeing to a Memorandum of Association, consented to a particular process being issued against him. He was resident in Scotland at the time the Company was formed. He consented to the Memorandum, by which a particular course was prescribed for the recovery of contributions, and therefore it did not lie in his mouth to say that it was contrary to natural justice that this judgment should be obtained. Demurrer overruled: judgment for plaintiffs.—Reported in Notes of Cases in the *Australian Law Times* (Melbourne, Victoria), for July 23, 1881.

CONNECTICUT SUPREME COURT OF ERRORS.

Kenyon v. Farris.

Wife—One Advancing Money for Necessaries to, can Maintain bill against Husband therefor.

The Court, per Pardee J.:—"This is a bill in Equity. The petitioner alleges that on or about the 1st day of March, 1876,

the respondent wilfully deserted his wife, she being without fault, that thereafter he neglected and refused to furnish means necessary for her support, that she was without means of support, and was in need of the necessaries of life; that at her request during the time of such need, the wife of the petitioner advanced from her separate estate, from time to time, sums of money aggregating eight hundred dollars to the respondent's wife, for the purpose of enabling her to procure the necessaries of life; and that she expended the money in the purchase for herself of such necessaries as her husband was legally bound to furnish. And the petitioner alleges that he brings this bill as trustee for his wife; and that he is without adequate remedy at law. He prays to be subrogated to the rights of the several persons who sold these necessaries to the respondent's wife; and that the respondent be ordered to pay said amount to him or such trustee; or that relief should be granted in some other manner.

The following cases are precedents for this bill:—

In *Harris v. Lee*, 1 P. Wms., 482, the petitioner had loaned £30 to the respondent's wife, who had left him for cause, to enable her to pay doctors and other necessaries. The Court said: "Admitting that the wife cannot at law borrow money, though for necessaries, so as to bind the husband, yet this money being applied to the use of the wife for her use and for necessaries, the plaintiff that lent this money must in Equity stand in the place of the persons who found and provided such necessaries for the wife. And therefore, as such persons could be creditors of the husband, so the plaintiff shall stand in their place and be a creditor also, and let the trustees pay him his money, and likewise his costs." And in *Marlow v. Pitfield*, 1 P. Wms., 559, the Court said: "If one lends money to an infant to pay a debt for necessaries, and in consequence thereof the infant does pay the debt, here, although he may not be liable at law, he must nevertheless be so in Equity." In *Dean v. Soutten*, L.R. 9 Eq., 151 (1869), the marginal note is as follows: "A person who has advanced money to a married woman deserted by her husband for the purpose of, and which has actually been applied towards her support, is entitled in Equity, though not at law, to recover such sums from the husband." In giving the decision, Lord Romilly, M.R., said: "I am of opinion that this is a proper suit and that the plaintiff is entitled to a decree. The cases

cited on behalf of the defendant have no application, and *May v. Shey*, 16 Sim., 588, is over-ruled by *Jenner v. Morris*, *supra*."

Jenner v. Morris (3 De G., F. and J., 45), was a bill to compel the payment of money advanced to a deserted wife. In giving the opinion the Lord Chancellor said: "An action at law could not be maintained for such a claim. Those who supply the necessaries to the deserted wife may sue the husband at law, she being considered his agent with uncountermandable authority to order the necessaries on his credit. But Courts at law will not recognise any privity between the husband and a person who has supplied his wife with money to purchase necessaries or pays the tradespeople who have furnished them. Nevertheless, it has been laid down from ancient times that a Court of Equity will allow the party who has advanced the money which is proved to have been actually employed in paying for necessaries furnished to the deserted wife, to stand in the shoes of the tradespeople who furnished the necessaries, and to have a remedy for the amount against the husband. I do not find any technical reason for this; but it may be possible that Equity considers that the tradespeople have, for valuable consideration, assigned to the party who advanced the money the legal debt which would be due to them from the husband on furnishing the necessaries, and that although a chose in action cannot be assigned at law, a Court of Equity recognises the right of an assignee. Whatever may be the reason, the doctrine is explicitly laid down in *Harris v. Lee*, 1 P. Wms., 482, and the other cases referred to. Objection has been made to these authorities, that they are very old, and that they do not appear to have been acted upon in modern times. But it may be said, on the other hand, that they have been acted upon without ever having been questioned, and that they are entitled to more respect from their antiquity. I find that they are cited and treated as good law by subsequent text-writers on this subject. Considering that to establish the equitable liability of the husband, proof is required that the money has been actually applied to the payment of the debt for which the husband would be liable at law, no hardship or inconvenience can arise from adhering to this doctrine."

In *Walker v. Simpson*, 7 Watts and S., 83, the Court said: "Although the husband is to blame for having caused the separation, yet he is only chargeable at law for necessaries

supplied to his wife at her request, and not with money lent or advanced to her, because money cannot be considered necessities, which consist of food, lodging and raiment. But where the money lent or advanced has been applied to the payment of necessities furnished to her, Equity will put the party lending or advancing the money in the place of the party who supplied the necessities."

We willingly follow the leading of these authorities, because we think that the line of separation between necessities and money loaned for the purpose of purchasing them may well be obliterated. So far as the husband is concerned they are practically convertible terms. His burden will not be increased if he is made liable for money; the scope of the word necessities will not thereby be broadened; the lender will be compelled to prove an actual expenditure for them; the law has discharged its duty to the husband in protecting him from liability for anything beyond them; it only discharges its duty to the wife by making it impossible for him to escape liability for these irrespective of the method by which he forces her to obtain them. If he has any preference as to that method the law will secure it to him; if he refuses to adopt any, he is not to be heard to complain if she is permitted to elect, providing always that she is kept within the small circle of necessity. It is not certain that credit will under all circumstances, supply necessities to the wife; at times they may not be had without money, and accidents of time, place or distance may bring about such a state of things as that a friend may be able and willing to place money in her hands upon her husband's credit, who cannot personally attend to its disbursement. There is error in the judgment complained of.

In this opinion the other Judges concurred, except Carpenter, J., who having tried the case in the Court below, did not sit.

Appearing in 46 Connecticut. From the Report in full in *Virginia Law Journal*, Richmond, Va., for August, 1881.

[It has seemed to us that the above judgment deserved to be placed on record in full in our pages, for the benefit of English practitioners. The doctrine embodied in the opinion of the Supreme Court of Errors of the State of Connecticut certainly appears to be both in itself sound and consonant to the tenor of the English cases which were followed. The

reasonableness of the view taken by the American Court, that money itself sometimes amounts to being a necessary, can scarcely admit of doubt. In the item of lodging it is perhaps even more frequently a "necessary" than in the other items allowed to be such, and this most particularly in the class of cases under consideration, *i.e.*, desertion. All that may be required for the protection of the husband from possible attempts at extortion under the name of necessities, appears to be protected in *Kenyon v. Farris*, while the deserted wife secures the means of obtaining that food, lodging and raiment, which, in themselves, Equity and Law alike allowed her].

Legal Obituary of the Quarter.

(ENGLAND, SCOTLAND, AND IRELAND.)

BLAND, Thomas, Esq., Solicitor, Nuneaton, aged 41. Admitted 1862. *Sept.* 17.

BRAMWELL, Henry Francis George, B.A. (1877, 2nd cl. *Lit. Hum.*, 1st cl. Classics, Mods., 1874), late Junior Student of Christ Church, Oxford, and of the Middle Temple, Esq., Student-at-Law, aged 27. Mr. Bramwell, who was son of George Bramwell, Esq., Solicitor, was admitted a Member of the Middle Temple in 1876. *Oct.* 16.

BRIDGMAN, Joseph, Esq., Solicitor, Chester, aged 54. Admitted 1852. *Sept.* 27.

BROOKE, Right Hon. William, LL.D., Q.C., P.C. (Irel.), Master in Chancery (Irel.), Honorary Benchers of the King's Inns, aged 85. Master Brooke, whose father was a distinguished Physician in Dublin, was educated at Trinity College, Dublin, which he entered at the singularly early age of 13, and where he passed a brilliant course, obtaining a Scholarship in 1812, and obtaining the Gold Medal on taking his degree in 1814. In 1817 he was called to the Irish Bar by the Hon. Society of the King's Inns, and in 1835 he took silk. In 1846, under Sir Robert Peel's Government, he was made a Master in Chancery. In 1870 he received the degree of LL.D., *honoris causâ*, and in 1874, during a suspension of the Irish Chancellorship, was a Commissioner of the Great Seal. Upon the dis-

establishment of the Irish Church, Master Brooke became a Member of the General Convention, and was also elected on the Diocesan Council and the Court of the General Synod. He was also on the Commission of the Peace for Co. Dublin. Our contemporary, the *Irish Law Times*, extracts from a local source the following tribute to the learned Master's memory:—"For near half a century the name of Master Brooke has been identified with every good and useful work in the country. . . . The name of Master Brooke was honoured not only for his goodness, but for his wisdom." Aug. 19.

BUCHANAN, William Fry, of Lincoln's Inn, Esq., Barrister-at-law, aged 53. Called 1853. Sept. 7.

BURKE, Thomas Richard, Esq., Solicitor (Irel.). Oct. 7.

BURKITT, Edward, Esq., Solicitor, aged 71. Admitted 1831. Aug. 2.

BURTON, John Hill, D.C.L., LL.D., Advocate at the Scottish Bar, Historiographer Royal for Scotland, aged 71. Dr. Burton, who was called to the Bar by the Faculty of Advocates in 1831, and was a Fellow of the Royal Society of Edinburgh and the Society of Antiquaries of Scotland, was author of several legal works, e.g., a *Manual of the Law of Scotland, Treatise on Bankruptcy Law, &c.*, and was for many years Secretary to the Prison Board for Scotland, and since 1877 a Commissioner under the Prisons' Act (Scotland). But it is as a Historian that the name of John Hill Burton will principally live in Literature. His *History of Scotland from the Revolution of 1688 to the Extinction of the Jacobite Insurrection* was published in 1853. Then, commencing at the *Origines* of his country, he worked down to the Revolution, and produced between 1867 and 1870 the *History of Scotland from Agricola's Invasion to the Revolution of 1688*, which led to his receiving the congenial appointment of Historiographer Royal, an old office of the Scottish Household. Other works of his, the *Scot Abroad*, the *Book-hunter*, illustrate the specially antiquarian side of his mind, while his *History of the Reign of Queen Anne* shows his acquaintance with the Augustan age of English Literature. Dr. Burton, who had received the degree of LL.D. from the University of Edinburgh in 1864, together with two other Scotsmen famed for their historical lore, David Laing and Joseph Robertson, was also honoured with the degree of D.C.L. from the University of Oxford, in recognition of his historical learning. Aug. 10.

CADMAN, William John Smelter, of Trin. Coll., Camb., and of

the Inner Temple, Esq., Barrister-at-Law, aged 43. Eldest son of the late William Cadman, Esq., of Cross House, Wath-on-Dearne, and of Millfield House, York. Mr. Cadman, who was educated at Trin. Coll., Cambridge, was called to the Bar in 1865, and joined the North-Eastern Circuit. He was J.P. for the West Riding. *Sept. 13.*

CALLAGHAN, His Excellency Thomas Fitzgerald, C.M.G., Governor of the Bahamas, of the King's Inns, Barrister-at-Law, aged 51. Educated at Trin. Coll., Dublin (B.A., Classical Honours), Mr. Callaghan was called to the Irish Bar in 1854, filled the office of Barrington Lecturer on Political Economy, Dublin Statistical Society, and was soon appointed Counsel to the Attorney-General for Ireland. In 1860 he entered the service of the Colonial Office as Chief Magistrate at Hong-Kong. In 1861 he was appointed Governor of Labuan and Consul-General for Borneo. In 1871 he became Administrator of the Government at the Gambia, going thence to the Falkland Islands in 1876. In 1877 he was nominated a Companion (Civil Division) of the Order of St. Michael and St. George, and in 1880 he was promoted to the Governorship of the Bahamas, which he held at the time of his sudden death at New York, while on sick leave to England. *Aug.*

CLARK, John GILCHRIST, of Speddock, Dumfriesshire, Esq., M.A., Advocate at the Scottish Bar, aged 51. Mr. Gilchrist Clark, who was educated at Trin. Coll., Camb. (B.A., 1853), and was called to the Bar by the Faculty of Advocates in 1855, was eldest son of John Clark, Esq., by the heiress of John Gilchrist of Speddock, Esq., the name of whose family he subsequently assumed. Mr. Gilchrist Clark was J.P. for the County of Dumfries and the Stewartry of Kirkcudbright, Lieut.-Col. of the Dumfriesshire Rifle Volunteers, and Chamberlain to the Duke of Buccleuch on the Drumlanrig Estates. *Aug. 18.*

CLARKSON, Eugene Comerford, Esq., Q.C., of Lincoln's Inn. Mr. Clarkson was called to the Bar by the Hon. Society of Lincoln's Inn in 1854, and was a Member of the Northern Circuit. He had taken silk only in March last. *Aug. 19.*

COXE, Bond, of the King's Inns and of the Middle Temple, Esq., Barrister-at-Law. Mr. Coxe was called to the Irish Bar in 1847, and to the English Bar in 1859. *Sept. 26.*

CROFT, John, Esq., Solicitor, aged 68. Admitted 1840. *Sept. 19.*

CURREY, Frederick, M.A., F.R.S., V.P.L.S., of Lincoln's Inn,

Esq., Barrister-at-Law, aged 62. Mr. Currey, who was the son of the late Frederick Currey, Esq., Clerk of the Parliaments, was educated at Eton and at Trin. Coll., Camb. (B.A. 1841), and was called to the Bar in 1844. He was distinguished as a botanist, and became a Fellow of the Linnean Society in 1856, and of the Royal Society in 1858. *Sept.* 8.

DADLEY, William, Esq., Solicitor, aged 84. Admitted 1831. *Sept.* 21.

DREWRY, Charles Stewart, of the Inner Temple, Esq., Barrister-at-Law, aged 76. Mr. Drewry, who was called to the Bar in 1836, was the author of several legal works, viz.:—*A Treatise on Injunctions, Reports of Cases in Equity, temp. Kindersley V.C., A Concise Treatise on the Principles of Equity Pleading, &c.*, and had also contributed articles to this Review. *Sept.* 30.

EASTLAKE, William, Esq., Solicitor, Plymouth, aged 60. Mr. Eastlake, who was Law Agent to the Admiralty, and Deputy Judge Advocate of the Fleet, was admitted 1844. *Oct.* 12.

EMPSON, John Henry, M.A., of Yokefleet Hall, Yorkshire, and of the Inner Temple, Esq., Barrister-at-Law, aged 37. Mr. Empson, who was the eldest son of the late John William Empson, Esq., of Yokefleet Hall, and of Ripple Hall, near Tewkesbury, was educated at Eton, and at Brazenose College, Oxford (B.A., 1866), and was called to the Bar in 1866. He was a J.P. for the East Riding. *Aug.* 29.

FIELD, Charles Ventris, Esq., Solicitor, aged 43. Educated at University College, London. Admitted 1862. *Sept.* 3.

FINNEY, John Douglass, Esq., Solicitor, aged 73. Admitted 1834. *Aug.* 19.

FORSTER, Matthew, M.A., of the Inner Temple, Esq., Barrister-at-Law, aged 55. Mr. Forster, who was son of the late Matthew Foster, Esq., M.P. for Berwick-on-Tweed, was educated at Trin. Coll., Camb. (B.A., 1850), and was called to the Bar in 1859. *Aug.* 18.

GAWTRESS, Henry, of the Middle Temple and South-Eastern Circuit, Esq., Barrister-at-Law, aged 52. Called 1856. *Oct.* 2.

GRANT, Thomas MACPHERSON, of Craigo, Esq., W.S. (Scot.), aged 65. Youngest son of the late Sir George Macpherson Grant, of Invereshie and Ballindalloch, by the daughter of Thomas Carnegie of Craigo, Esq., Mr. Macpherson Grant was admitted a member of the Society of Writers to Her Majesty's Signet in 1837. He was D.L. and J.P. for Moray-

shire, and J.P. for Banffshire and Forfarshire. In 1856 he inherited Craigo from his cousin, the last Carnegy of Craigo.
Sept. 23.

GREENING, Henry, of the Middle Temple, Esq., aged 71. Mr Greening, who was educated at the Charterhouse, was admitted a member of the Hon. Society in 1847, and practised as a special pleader under the Bar. He edited "Chitty on Pleading," besides publishing several works from his own pen on the same branch of Law. *July 31.*

HEDGES, Fentham, of Weir House, Sunbury, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 28. Educated at Uppingham School, and at Exeter College, Oxford (B.A., 1875), he was called 1878. *Aug. 1.*

HELSEBY, Thomas, of Lincoln's Inn, Esq., Barrister-at-Law, aged 65. Mr. Helsby, who was called to the Bar in 1858, was great-grandson of Thomas Helsby, Esq., of Helsby, Cheshire.
Sept. 26.

HINCKS, John Swanwick, Esq., Solicitor, formerly of Leeds, aged 78. *Sept. 20.*

HURLSTONE, Edwin Tyrrell, of the Inner Temple and of the the South-Eastern Circuit, Esq., Barrister-at-Law, Revising Barrister for Hertfordshire, aged 75. Called 1834, Mr. Hurlstone was well known as joint author of Hurlstone and Norman's and Hurlstone and Coltman's *Exchequer Reports*. *Oct. 3.*

HURRELL, John, of the Middle Temple, Esq., Barrister-at-Law, Revising Barrister for Mid-Surrey. Called 1840. *Oct. 15.*

INCE, John Thomas, Esq., Solicitor. Admitted 1870. *Aug. 27.*

JOHNSTONE, Edward, M.A., of Galabank, Dumfriesshire, of Fulford Hall, Warwickshire, of Dunsley Manor, Staffordshire, and of the Inner Temple, Esq., Barrister-at-Law, aged 77. Mr. Johnstone, who was of Trin. Coll. Camb. (B.A. 1825), was called to the Bar in 1825, and was eldest son of the late Edward Johnstone, Esq., M.D., of Edgbaston Hall, Warwickshire, and grandson of James Johnstone, of Galabank, M.D., whose ancestor, John Johnstone, formerly of Mylnefield, is stated in the last edition of Burke's *Landed Gentry* to have purchased Galabank in 1625. Mr. Johnstone had, as recently as 1876, put forward a claim, as heir male of the Johnstones of Gretna, to the Annandale Peerages, which have been dormant since 1792, and have been before the House of Lords for nearly a century. As his case would have excluded all other claimants in the male line, it was taken first, but the

decision of the Committee of Privileges was adverse to his claim, evidence having been put in of the separate existence of the Gretna line at an earlier date than was asserted in his case. *Sept. 20.*

KARSLAKE, Right Hon. Sir John Burgess, Kt., Q.C., formerly Attorney-General, aged 59. Sir John, who was son of Henry Karslake, Esq., Solicitor, by Elizabeth, daughter of Richard Preston, Esq., Q.C., sometime M.P. for Ashburton, was educated at Harrow. He was called to the Bar by the Hon. Society of the Middle Temple in 1846, and joined the Western Circuit, of which he became one of the leaders. In 1861 he took silk, and shortly afterwards became a Bencher of his Inn, serving the office of Treasurer in 1873. He was M.P. (Conservative) for Andover, 1857-68, and for Huntingdon, 1873-6. In November, 1856, he was appointed Solicitor-General, and in 1867 he was knighted and made Attorney-General, going out next year with his party. In 1874 Sir John was again named Attorney-General but was obliged to resign from failing health in 1876, when he was made a Privy Councillor. *Oct. 4.*

We feel that we cannot do better justice at the present moment to the memory of Sir John Karslake than by extracting a brief passage from the letter addressed to the *Times* by Lord Coleridge:—

"His knowledge of his profession, gathered by a vigorous and retentive mind from a legal training of unusual length, was, as far as my experience goes," so writes the Lord Chief Justice, "unparalleled . . . And the same thoroughness with which he knew his profession always marked his knowledge of his cases . . . His standard of work was so high, his conscientiousness so severe, that he was never satisfied unless he had himself traversed the whole field of his operations . . . He worked on with unflinching spirit for years in almost constant pain; then with failing eyesight, at last ending in total blindness, which compelled him to retire into private life. . . . Long after he was blind he was still the life of any company he joined; and few suspected how much pain and sadness lay hid under the veil of that gay courage. . . . He was a great advocate; he had rare manliness, integrity and force of mind; he had a keen sense of honour; he was a delightful companion, a faithful friend. . . . When the grave closes over his remains there will be left behind him the brightest example, and we who knew him shall have the memory of the noblest specimen of

what an English advocate and an English gentleman ought to be and can be."

KIDSON, Charles, Esq., Solicitor, Sunderland, aged 35. Admitted 1868. Clerk to the Justices, Sunderland Division of Co. Durham. Son of John Kidson, Esq., J.P., Sunderland. *Aug. 2.*

KISBEY, Richard Scott, of the Middle Temple, Esq., Barrister-at-Law, aged 55. Called 1865. *Oct. 18.*

LATHAM, Henry, Esq., Junr., Solicitor. Admitted 1874. Mr. Latham was killed by a fall on the mountains near Grindelwald. *Sept. 8.*

LAYCOCK, Robert, M.A., M.P., of Wiseton Hall, Notts., and Lintz Hall, Durham, and of the Inner Temple, Esq., Barrister-at-Law, aged 47. Eldest son of the late Joseph Laycock, Esq., of Low Gosforth Hall, Northumberland. Educated at Trin. Coll., Camb. (B.A., 1856, M.A., 1859). Called 1857, and a Member of the Northern Circuit. Mr. Laycock, who was D.L. and J.P. for Co. Notts., and J.P. for Northumberland, served as High Sheriff of Nottinghamshire in 1878. At the last General Election he became M.P. (Liberal) for North Lincolnshire. *Aug. 14.*

MCGRATH, William Henry, Esq., Solicitor (Irel.), of Toonagh, Co. Clare, aged 71. Admitted 1834. Mr. McGrath, who was J.P. for Co. Clare, was for many years Crown Solicitor for Cos. Fermanagh and Tyrone. *Aug. 13.*

MARGETTS, Charles, Esq., Solicitor, Huntingdon, aged 85. Admitted 1818. Mr. Margetts was Deputy-Registrar of the Archdeaconry of Huntingdon. *Oct. 15.*

MARSHALL, William Julius, M.A., of Lemna House, Leytonstone, and of the Inner Temple, Esq., Barrister-at-Law, aged 52. Mr. Marshall, who was called in 1867, was Lieut.-Colonel of the West Suffolk Militia, and was of Exeter College, Oxford (B.A. 1850). He was a Member of the South-Eastern Circuit. *Aug. 24.*

MASSEY, Rt. Hon. William Nathaniel, M.P., of the Inner Temple, Barrister-at-Law, aged 81. Mr. Massey, who was of the family of the Lords Clarina, gained considerable reputation as a historian by his *History of England under George III.* He was called to the Bar in 1844, and became a member of the Western Circuit. He was M.P. for Newport 1852-7, and for Salford 1857-65, when he was named a member of the Council of the Governor-General of India, and Finance Minister, and was sworn of the Privy Council. He was Under-Secretary, Home

Department, 1855-8, and in 1859 Chairman of Committees, House of Commons. *Oct. 25.*

MELLER, Henry James, of Pinetown, Natal, and of the Middle Temple, Esq., Barrister-at-Law, aged 73. Called in 1840, Mr. Mellor was long Resident Magistrate at Durban, Natal. *May 15.*

MITCHELL, Theophilus, M.A., Oxon., of Braddon Fields, Torquay, and of the Inner Temple, Esq., Barrister-at-Law, aged 42. Called 1876. *Oct. 16.*

PARKER, Right Hon. John, M.A., of Lincoln's Inn, Barrister-at-Law, aged 81. Mr. Parker, who was a J.P. for the East Riding of Yorkshire, and formerly M.P. for Sheffield, was the son of Hugh Parker, Esq., of Tickhill, Doncaster; and was educated at Repton School, and Brazenose College, Oxford (B.A., 2nd cl. *Lit. Hum.*, 1820). He was called to the Bar in 1824, when he joined the Northern Circuit. In 1832 he was returned as one of the Members (Liberal) for Sheffield, for which constituency he sat till 1852. From 1836 to 1841, Mr. Parker was a Lord of the Treasury, and during 1841 First Secretary of the Admiralty. From 1846 to 1849 he was Joint Secretary of the Treasury, and again First Secretary of the Admiralty, 1849-52. In 1853 he became a Privy Councillor. *Sept. 5.*

PIKE, William, of Glendarary, Co. Mayo, and of the Middle Temple, Esq., Barrister-at-Law, aged 61. Mr. Pike, who was a son of the late Jonathan Pike, Esq., of Beechgrove, Co. Tyrone, was called to the English Bar in 1849, and was J.P. for Co. Mayo. *Aug. 15.*

POLE, Charles Chandos, of the Middle Temple, Esq., Barrister-at-Law, aged 58. Called 1849. *Sept. 20.*

POOLE, David Charles, of the Middle Temple, Esq., Barrister-at-Law. Called 1833. *Sept. 16.*

PROTHERO, Thomas, F.S.A., of Lincoln's Inn, Esq., Barrister-at-Law, aged 65. Called 1854. *Sept. 15.*

RADCLIFF, Joseph, M.A., of Lincoln's Inn, Esq., Barrister-at-Law, aged 43. Called 1864. *Sept. 13.*

ROGAN, John Thomas Erskine, of the Inner Temple, Esq., Barrister-at-Law, Gisborne, New Zealand. Called 1866. *June 23.*

SALE, William, Esq., Solicitor, Manchester, aged 82. Admitted 1830. *Oct. 13.*

STEPHEN, Hon. James Wilberforce, a Judge of the Supreme Court, Victoria, Australia. Mr Justice Stephen, who had

been leader of the Equity Bar at Melbourne, and Attorney-General for Victoria, before his elevation to the Bench of that Colony in 1874, was called to the English Bar by the Honourable Society of Lincoln's Inn in 1849. Our contemporary, the *Australian Law Times* of Melbourne, for August 20th, in recording the lamented Judge's death pays a high tribute to his memory. "Sprung from a race eminent for their professional distinctions in both the old world and the new, their legal ability partaking almost of the nature of a hereditary instinct, Mr. Justice Stephen's capacity was too deep and varied, and his public feeling too broad and strong to allow him to remain satisfied with an exclusive devotion to merely legal pursuits. In his time he occupied a prominent position both in Parliament and in administering the affairs of his adopted country. . . . On the bench, his opinion and rulings were distinguished by the strong element of common sense that pervaded them." The brilliant career of James Wilberforce Stephen at the University of Cambridge, the *Alma Mater* likewise of other distinguished members of his family, would have ensured him success at home. Fourth Wrangler in 1844, he was soon elected Fellow of St. John's. He took his M.A. in 1847, two years before being called to the Bar. *Aug. 14.*

SYMES, Robert Warren, of the King's Inns, Esq., Barrister-at-Law. Called to the Irish Bar, 1868. *Sept. 7.*

TIGHE, Robert, M.A., of the King's Inns, Esq., Barrister-at-Law, aged 76. Eldest son of Robert Tighe, Esq., M.P. for Carlow at the Union. Mr. Robert Tighe was educated at Trin. Coll., Dub. (B.A., 1827, M.A., 1847), and in 1829 was called to the Irish Bar. He held the appointment of Assistant-Barrister for Co. Limerick. *Aug.*

TITT, Charles Perceval, Esq., Solicitor, aged 69. Admitted 1835. *Aug. 15.*

TRENCHARD, Henry Charles, Esq., Solicitor, Taunton, aged 68. Admitted 1831. *Sept. 12.*

WARING, Robert, Esq., Solicitor, Ormskirk, aged 80. Admitted 1822. *Sept. 26.*

WILDMAN, Richard, of the Inner Temple, Esq., Barrister-at-Law, aged 79. Youngest son of James Wildman, Esq., of Chilham Castle, Kent. Mr. Wildman, who was educated at Harrow, and at Christ Church, Oxford, was called to the Bar in 1829. In 1837 he was appointed Recorder of Nottingham, and Judge of the Court of Request for Derbyshire, and in 1847 Judge of

County Courts, retiring only in May last. He was author of several well-known works, the *Institutes of International Law*, *Guide to Naval Officers as to the Law of Search*, &c. Aug. 26.

WILLIAMS, Joshua, of Lincoln's Inn, Esq., Q.C., aged 68. Called to the Bar in 1838, Mr. Joshua Williams became a Master of the Bench of his Inn in 1865. He took silk, at a comparatively late date, in 1865. His appearances in Court were rare, and chiefly connected with that branch of the Law of England of which he was so eminent a master. He was for some years Professor of the Law of Real and Personal Property to the Four Inns of Court, and had not long since published the last series of his Lectures on the *Seisin of the Freehold*, and on *Rights of Common*, the latter of which was reviewed in our pages, in our number for August, 1880. Oct. 25.

WILLOUGHBY, Henry William, Esq., F.R.S.L., Solicitor, aged 46. Admitted 1857. Mr. Willoughby was at the time of his death one of the Auditors of the Royal Society of Literature, having previously been a Member of the Council. Sept. 15.

WORTLEY, Right Hon. James Archibald STUART-, M.A., Q.C., Senior Master of the Bench of the Hon. Society of the Inner Temple, aged 76. Mr. Stuart-Wortley, who was youngest son of James Archibald, first Lord Wharncliffe, was great grandson of John, third Earl of Bute, K.G., Prime Minister 1757-63, and was uncle of the present Earl Wharncliffe. Educated at Christ Church, Oxford (B.A., 1826), he became Fellow of Merton and M.A., 1831. He was called to the Bar by the Inner Temple, 1831, and went the Northern Circuit. In 1841 he took silk, and in 1845 was appointed Solicitor-General to the Queen Dowager, and Attorney-General for the Duchy of Lancaster. In 1846 he became Judge Advocate-General, and a Privy Councillor. From 1850 to 1856 he was Recorder of London, and in 1856-7 held office as Solicitor-General. He sat in the House of Commons as M.P. (Conservative) for Halifax, 1835-7, and for Buteshire, 1842-59. Mr. Stuart-Wortley was D.L., and J.P. for the West Riding of Yorkshire, D.L. for Buteshire, J.P. for Surrey, and a Commissioner of Lieutenancy for London. The Stuarts of Bute, whose chief, the Marquis of Bute, is Earl of Bute (1703), by male descent, and Earl of Dumfries (1635), as heir of line of the Crichtons, Earls of Dumfries in the Peerage of Scotland, were Heritable Sheriffs of Bute down to the abolition of Heritable Jurisdictions in 1748. Aug. 22.

Quarterly Notes.

The conflicts and complications of Law which perplex the administrators of extra-territorial Justice to the subjects of Western Powers in the Ottoman Empire, are signally illustrated in a case in which judgment has lately been given in Her Britannic Majesty's Consular Court at Constantinople.

The case to which we refer is that of *Baudouy's Heirs v. Jacob and Werry*, reported in *Stamboul* of 26th August last, and for a copy of which we are indebted to the kindness of the Acting Judge, Mr. W. Palfrey Burrell, M.A., of the Inner Temple, Barrister-at-Law.

The suit was originally brought in the course of last year, by Mme. Emma Baudouy (*née* Reboul), widow of M. Joseph Baudouy, Director of Ottoman Lighthouses, against Messrs. Jacob & Werry, contractors, for damages for non-fulfilment of a building contract.

Three points stood for decision: (1.) Competency. (2.) Alleged necessity for stopping proceedings in the Consular Court on account of pendency of an identical case before the Ottoman Courts. (3.) Alleged Ottoman character of the plaintiff as a Latin Ottoman subject, so registered at the Latin Chancellerie at the time of commencing the suit in the British Court. In delivering the opinion of the Court, the learned Acting Judge took these points *seriatim*.

The first question, that of Competency, was speedily decided in the affirmative, reference being made to *Langley v. Keith*, where the same point had been raised, and determined in favour of the jurisdiction of the British Court by Sir Philip Francis, then Judge. Other cases—*Rigaudias v. Sarell* and the *Trustees of Jenkins's Estate v. King*—were also referred to by the Court to strengthen the present decision.

The second question, the argument of *lis alibi pendens*, was even more speedily disposed of. Admitting the possibility of Comity occasionally dictating a refusal, where two cases were actually identical, the learned Judge held that in the matter before him the identity alleged was disproved by the affidavits of the counsel in the case before the Civil Court of Pera.

The real *crux* was evidently that presented by the third point, the alleged Ottoman character of Mme. Baudouy. And this is also the most interesting point, as illustrating the conflict of Laws and Nationalities in the Ottoman Empire. There appears to be no doubt that Mme. Baudouy was registered as a Latin Ottoman subject, but it was for a special purpose, and by a fiction of Ottoman Law, rendered requisite at the time by the Territorial Law forbidding non-Ottomans to hold real property in the Empire. It was never supposed or admitted by their respective Embassies and Consulates that persons so registered lost their national character of origin by a fictitious Ottoman registration in evasion of the Land Laws.

It would, of course, be easy to blame such evasions *in fraudem legis terra*, and probably a sincere Mohammedan would blame the Western powers for conniving at them. But it is obvious that they were under the circumstances unavoidable, and the circumstances were produced by Ottoman, not by Western requirements. If it was not possible to obtain the necessary title-deeds, except by means of such a fiction, the fiction would infallibly be resorted to. Proof was given by affidavits of the Chancellor of the French Consulate, and the Dragoman of the British Embassy, that such fictitious registration as an Ottoman subject was never understood by either of them as affecting the nationality of origin of the person so registering. And the French Chancellor explicitly declared in the case in question, that Madame Baudouy had not at any time lost the double nationality which she had by birth and by marriage. And accordingly it was with the formal permission of the French Consulate that Mme. Baudouy brought her suit as a French subject.

On these premises the Court came to the conclusion that the third allegation of the defendants was disproved equally with the first two, and that judgment must be given for the plaintiffs, the costs to be costs in the cause.

Singularly enough, as though to increase the complications of this case, a change of the Territorial Law was made by a circular of 29th June, 1870, doing away with the necessity for the fictitious registration, so that Mme. Baudouy was enabled to obtain new title-deeds on application to the local Courts in her capacity as a French subject, thus in fact affording fresh proof of her real and unchanged nationality. But she only had time to enter her application for the new deeds ten days before her

death, and they were actually issued the day before she died. Besides the question of the *Hodjet*, or title-deeds, there was yet another point raised, viz., that Mme. Baudouy had applied to have an *Ilmi haber*, or permission for water supply, granted to her as a French subject, and that it was refused until she produced one granted to her as an Ottoman subject. The Court did not feel itself bound in any way to decide that point, which it regarded as being of purely local competence. But we may remark that it appears to us to partake of the same character as the *Hodjet* or title-deeds question, and to be practically covered by the decision thereon, supposing that any special decision on it had been required. And if we might, without offence, make such a suggestion, it appears to us that the results of such a requirement as was here alleged on the part of the defendants would be very similar to those which would flow from a by-law of the London Gas or Water Companies requiring the profession of the Parsee faith on the part of persons applying for gas or water supply. It can hardly be doubted, we think, that after the first outburst of astonishment and indignation, and letters to *The Times*, the result would be a singular nominal increase of the English co-religionists of the eminent philanthropist, Sir Jamsetjee Jeejeebhoy. Whether there would be a corresponding increase of philanthropy in London, may, however, be open to question.

In the course of his judgment the Acting Judge took occasion to remark that the Consular Courts at Constantinople were the only Extra-territorial Courts in existence before which such questions as those involved in the case before him could now come. For in Egypt they would, as he observed, come before the International Tribunals. But the difficulty thus imposed upon the Consular Courts seems one from which it would not be easy to relieve them. In the existing state of things at the Sublime Porte, it is not in the least likely that any Western power would waive its right of extra-territorial jurisdiction, or that any mixed Court on the plan of the Egyptian could be established at Constantinople with a fair chance of success. The difficulty, we believe, would lie rather with the Ottoman than the Western members of such a Court. With a Paper Constitution, and Paper Laws all largely built on Western lines, but all about equally inoperative; and with a background of Koran, impossible to reconcile either with the laws of Christendom as such, or with the Western veneer influencing the language and outward

aspect of modern attempts at Ottoman Constitutionalism,—any such harmony as has been fairly well established in Egypt, would, we fear, be out of the question in Constantinople. And so long as things remain as they are, there will be work, and no lack of it, for Her Britannic Majesty's Consular Court at the Gate of Felicity.

It would seem, moreover, that if Mme. Baudouy's act in procuring her registration as a Latin Ottoman subject was, as it would have been on the hypothesis of its reality, an Act of Naturalisation, it should have implied (a) the permission of her own Government; (b) an application to the Ottoman Ministry of Foreign Affairs, and probably the consideration of the case by the Imperial Commission at the said Ministry, instituted in pursuance of the law on Ottoman Nationality of the 19th January, 1869, by a Règlement of 17th July following. Such, at least, seems to be the opinion of M. Cogordan on the Naturalisation in the Ottoman Empire of persons assumed to be French subjects, as expressed in his able book *La Nationalité au point de vue des Rapports Internationaux* (Paris, Larose, 1879). It is, of course, quite clear that no such steps were taken, or they would have appeared in the case. It may be open to consideration whether the case itself affords grounds for supporting the view suggested by M. Cogordan, of the desirableness of other countries obtaining by Convention, as has already been done by Russia, the establishment of Mixed Commissions to decide upon questions of Nationality in the Levant. The constitution of these Commissions as agreed upon between Russia and Turkey seems open to improvement. They consist, locally, according to the Vizirial Circular of 17th Rebiul Ewel, A.H. 1286, printed by M. Cogordan, *op. cit.*, p. 493, of one or more members named by the local authority, and one by the Russian Consul. Appeal lies from the Local Commission to the Sublime Porte, in agreement with the Russian Embassy there. But it is possible to suppose a case in which the Porte and the Russian Embassy might be unable to agree, and the same might well happen with the Embassies of other Western Powers. We do not see on the surface of the Circular of 1286, what is to happen in such a case. We imagine that the unfortunate subject of disagreement between such very high contending parties would remain suspended between his two Nationalities, like Mahomet between Earth and Heaven, claimed by both States, probably

also taxed by both, but effectually protected by neither. The position is not an enviable one, and while we are far from suggesting that it would ever be a common one, its mere possibility strengthens our doubt whether there is any present solution for the problem of conflicting Nationalities in the Ottoman Empire.

* * *

We have been favoured by Mr. F. T. Piggott, M.A., barrister-at-law, with the following version of the Brazilian Enactment [*Règlement*], 27th July, 1878, relative to the execution of Foreign Judgments, from the French translation, by Baron d'Ourém, in the *Annuaire de Législation Etrangère*, published by the Society of Comparative Legislation. (Paris: Cotillon, 1879, pp. 736-747.):

Art. I. Foreign judgments in civil or commercial matters shall be capable of execution in Brazil only when they fulfil the following conditions:—

- a. That the nation to which the judges or tribunals belong who have pronounced the judgment admits the principle of reciprocity.
- b. That such judgments come before the Courts clothed with the extrinsic formalities necessary to render them executory, according to the law of the foreign State.
- c. That they have the force of *res judicata*.
- d. That they have been duly legalised by the Brazilian Consul.
- e. That they are accompanied by a translation made by a sworn interpreter.

Art. II. Notwithstanding the fulfilment of the above conditions, such judgments shall not be executed if they contain any principle contrary to

- a. The sovereignty of the nation, as for example, if they have withdrawn a Brazilian subject from the jurisdiction of the tribunals of the Empire.
- b. Laws which are rigorously obligatory, being founded on reasons of public order, such as rules which forbid the institution of the Church (*l'âme*) or religious bodies as heirs.
- c. Laws which affect real property, such as those which forbid the creation of entails (*majorats*) or perpetuities.

d. The moral law, for example, if the foreign judgment has authorized polygamy or customs contrary to public morality.

Art. III. Those Brazilian judges are competent to allow execution who would be so competent had the judgment been pronounced by judges or tribunals of the Empire.

Art. IV. The judge to whom the judgment is presented for the purpose of obtaining execution shall see whether it fulfils the conditions of Art. I., or whether, not being contrary to the provisions of Art. II., it is capable of execution.

a. If he finds the judgment is capable of execution, he will endorse it with the necessary order (*cumpra-se*).

b. Against an order refusing the *exequatur* an appeal is allowed (*aggravo de petição ou de instrumento*).

Art. V. If doubts arise as to the existence of the principle of reciprocity, the judge shall ask the Government through the medium of the Minister of Justice for instructions upon this point.

Art. VI. The procedure as to execution, and its different processes and incidents, is to be regulated by the laws, customs and practice in force in the Empire relating to the execution of Brazilian judgments of a similar nature.

Art. VII. But the interpretation of the judgment and its immediate effects shall be determined by the law of the country where the judgment was given.

Art. VIII. During the six days following the distraint [*saisie*] in personal actions, or during the ten days allowed to redeem the *res* in real actions, the party against whom execution has issued, may plead exceptions (*embargos*) to the judgment,

1. Founded on Arts. I. & II.

2. Of nullity [*de nullidade*] : (that the judgment is null and void).

3. Offensive [*infringentes, i.e., against the authority of the res judicata*].

a. If the exceptions so pleaded are sustained, the judge, in setting forth the reason in fact and in law, shall simply state that the judgment is not executory.

b. From the order by which the judgment is declared not executory, an appeal is allowed, which shall have two-fold effect (*dévolutif et suspensif*).

Art. IX. When the judgment has been declared not executory, all the papers, pleadings, documents, and other proofs which have been made use of to establish it may be

produced in actions initiated in the Empire for the same object, and shall be received according to their legal value.

Art. X. Foreign judgments in partition suits must be invested with the *exequatur* (Art. IV.) before they can be received administratively as carrying legal effect.

Art. XI. Judgments which are simply declaratory, such as those which decide questions of *status*, must also be invested with the *exequatur*.

Art. XII. Although a foreign judgment may not have been invested with the *exequatur*, yet it shall always have the force of *res judicata* before the tribunals of the Empire, if it fulfil the conditions of Art. I. and do not involve any principle contrary to the provisions of Art. II.

Art. XIII. Subject to the provisions of this decree, awards confirmed by foreign tribunals shall also be executory in Brazil.

Art. XIV. And similarly foreign adjudications in bankruptcy against traders having their domicil in the country where these judgments have been pronounced.

Art. XV. The above judgments, after having received the *exequatur* from the Brazilian judges (Arts. I. and II.) and after the publication of this *exequatur*, shall produce in the Empire the legal effects inherent to adjudications in bankruptcy, subject to the restrictions set out in Arts. XVII.—XX.

Art. XVI. Independently of the *exequatur*, and simply on production of the judgment and of the deed nominating them, in a properly authenticated form, the syndics, administrators, or trustees shall have power in virtue of their office to institute [*provoquer*] in the Empire as mandatories, measures for the preservation of the rights of the creditors [*droits de la masse*], to recover debts, to carry on business [*transiger*] if they have powers to that effect, and to initiate actions.

But all acts which may directly necessitate the execution of the judgment, such as seizure and sale of the debtor's goods, can only be performed after the judgment has been made executory by means of the *exequatur*, and with the authority of the Brazilian judge, the formalities required by the national laws being observed.

Art. XVII. Although the foreign adjudication in bankruptcy has been made executory, creditors domiciled in Brazil, who may have a lien over immoveables situated there belonging to the bankrupt, may sue for payment of their debts, and appropriate the said immoveables.

Art. XVIII. The provisions of the preceding Article apply to creditors on a promissory note [*chirographaires*], in like manner domiciled in Brazil, who have commenced action against the debtor prior to the granting of the *exequatur*. They shall be allowed to continue their actions and appropriate the bankrupt's goods situate or being within the Empire.

Art. XIX. The foreign adjudication of bankruptcy against a trader having two places of business—one in the country of his domicil and the other, distinct and separate, in Brazil—shall not include in its effect the Brazilian place of business. The bankruptcy of this establishment can be declared only by the Brazilian authorities; and the creditors of this establishment shall be paid out of its own assets in preference to the creditors of the foreign establishment.

Art. XX. Mutual agreements for delay or otherwise [*concordats et sursis : moratoria*], confirmed by foreign tribunals, shall only be binding on creditors resident in Brazil when they have been summoned to join in them, and after the *exequatur* has been given.

Art. XXI. It is understood that foreign adjudications in bankruptcy pronounced against traders domiciled in the Empire (Art. II., a.) are not capable of execution in Brazil.

Art. XXII. Where a treaty or convention has been entered into with any foreign nation, relating to the execution of judgments, the stipulations therein contained shall be observed.

Art. XXIII. All provisions contrary to the present regulation are repealed.

In further elucidation of the Brazilian Règlement it will be well, we think, to supplement Mr. Piggott's translation by some passages from the report made to the Emperor by the Minister of Justice, D. Rodrigues Pereira, in presenting it for his approbation, and also from Baron d'Ourém's general notes on the subject, printed in the *Annuaire de Legislation Etrangere* for 1879. Adverting in the first place to the law of 1875, by which the Government was authorised to regulate the execution of foreign judgments in civil matters, the Minister observes that the entire question is one of the gravest and most important in private international law.

The binding force of a judgment, he of course admits, is derived from the judge pronouncing it, and *extra territorium jus dicenti impune non paratur*. A foreign judgment therefore requires the sanction of the local Courts, i.e., of the territorial sovereignty

of the country in which execution is sought. But, inasmuch as some rules of law could not be applied beyond the local sovereignty which imposed them, *e.g.*, rules infringing the independence or the public order of the State in which execution is sought, the local Courts must revise the judgment, and either grant or refuse execution according to circumstances. Thus, a foreign judgment deciding that certain immoveables were to be restored to the heir of a foreign testator in order to form part of an entail (*majorat*), says His Excellency, clearly could not be allowed execution in Brazil, and this is provided for by Art. II. of the *Règlement*.

On coming to the contested question of the division into a real and personal statute (*statut réel, statut personnel*), which he calls an invention of the older jurists, the Brazilian Minister of Justice declares that he has preferred to base the *Règlement* on the modern doctrine, founded upon the nature of legal relations, and their influence on the law of the land where execution is sought for the foreign judgment.

On the still more sharply contested question as to the power of reviewing the merits and validity of the foreign judgment, and possibly, therefore, of annulling or revising it, the Brazilian Minister of Justice states that he has preferred the *via media* course, so to speak, by which the local Court takes cognisance of the merits, and of the question of nullity, and if it finds the foreign judgment to be null and void, or iniquitous (*inique*), instead of annulling or revising it, simply refuses to grant execution. This course of action, His Excellency hopes, will avoid wounding the dignity of Foreign Tribunals, while respecting that of the Territorial Courts. We trust that so moderate a policy will be duly appreciated by the Courts whose judgments may be brought to the cognisance of the judicature of the Brazilian Empire.

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In the Hon. Stanley Matthews the Bench of the Supreme Court of the United States has evidently gained a jurist of refinement and culture. We have been struck with the eloquent earnestness of his pleading on behalf of the highest view in his remarkable essay on *The Function of the Legal Profession in the Progress of Civilization* (Cincinnati: Robert Clarke & Co., 1881), the Address delivered by him on the 20th September last at the meeting of the Bar Association of the State of

New York. The question discussed by the learned Judge is in itself one of wide interest, and on the view taken by the members themselves of their position in the State depends much of the good repute which it is so eminently desirable that the Profession, in both its branches, should alike enjoy and deserve. The very existence of the Profession, as Mr. Justice Matthews rightly insists, is a note of Civilization. It is to be borne in mind, however, as Chancellor Kent justly pointed out in a passage very pertinently cited in the Address before us, that with the advance of Civilization, "the Law will gradually and necessarily assume the character of a complicated science, requiring the skill and learning of a particular profession." Now, this very complication of the Law, and the special learning for which it creates a necessity, will also be found, as a rule, to lead to a certain distrust of the Profession: it will often be thought and said of them that they "intentionally contrive ambiguity in legislation, in order to beget and promote litigation." From this "ambiguity" it is to be feared that our own legislation is seldom free, but on the whole the burden is cast, with us, on the Parliamentary draftsman, or on the Legislature itself, rather than on the Legal Profession. More haste, worse speed, is a saying which may be applied to many Bills which have had the good or evil fortune to pass into Law at the eleventh hour, or after a discussion which has turned them out so that their very Legislative sponsors can scarcely recognise the features of the original measure. We have not yet come in England, we fancy, to the point of a candidate for Parliament saying, in excuse of his membership of the Legal Profession, what Hon. Stanley Matthews relates of a candidate for a State Legislature, who explained to his would-be constituents that "he was not lawyer enough to hurt!"

But there are better things than these which can be said of their Profession by lawyers, and which Mr. Justice Matthews suggests, though he does not always utter them. The conception of Law being, by the analysis which he makes of it, coincident in one aspect with that of Social Order, it would follow, we should hope, that the Legal Profession is one of the appointed custodians of that Order. And if Social Order obeys the law of evolution and development, as the learned Judge pleads, so surely must the Legal Profession. If that Profession lags behind, or crystallises, it becomes a hindrance

instead of a help in the way of Social Progress. Jurisprudence must advance, and Jurists must advance, with the times. Else, to put it on no higher ground, the Legal Profession will find its influence on the wane, and that we conceive is a bad symptom in any country. "Jurisprudence," as was rightly urged in Court by Charles O'Connor, "is only the means: Justice is the end." But in order to will the end we must also will the means. We must make Jurisprudence advance with the times. We must make Jurisprudence the handmaid of Justice. So only can it truly be said "*jus suum cuique tribuere.*" So only can it be rightly called "*divinarum atque humanarum rerum notitia.*" The struggle for Justice, which, as Judge Matthews insists, goes on continually, is the real battle about Law. And the mission of the Legal Profession is, we readily agree, "to formulate the progress of Civilisation, and to superintend the gradual perfection of its organisation, according to the idea of Justice." A truly noble mission, though as yet, indeed, incomplete. We may never see its full realisation. But we live on the hope of it, and we ought not to cease to expect it. "The hope of this advancement," to use the glowing language of Mr. Justice Matthews, "is what sweetens the bitterness of living, makes light its burdens, and turns sacrifice into delight. Without it, it is not perhaps too much to say that life would scarcely be worth living." In that perfect social order, which is and has been "the inextinguishable aspiration of men in all ages and countries," the "perfect Law of Justice will be accomplished in every human relation, and will cover with its shield the weakest from every conceivable wrong." It is well to have a high aim set before us, even though we may never reach it. We do not expect to live to see the Perfect Social Order here depicted. But we can only say of it, *Fiat ! Fiat !*

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The Autumnal Congress Season of 1881 has passed off on the whole very satisfactorily. At Cologne, in the Hall of the Hansa, the Association for the Reform and Codification of the Law of Nations held its ninth Annual Conference, with considerable brilliancy and much lively discussion. Sir Travers Twiss, D.C.L., Q.C., brought to light some historical facts of high interest alike to his English and German hearers in regard to the "Early Charters granted by the Kings of England to the

Merchants of Cologne," and an "Ancient Charter granted by the Burgrave of Drachenfels to the Chapter of Cologne." Of these, the former are only to be found now in the Archives of the City of Cologne; the Burgrave's Charter, however, giving license to the Chapter to quarry stone from the Dragon Rock for the Cathedral, is in our own custody, as Add. Ch. 16,148, in the British Museum. The charters in the "Privilegienbuch" of Cologne are specially deserving of notice in that they unquestionably carry the concessions of our Kings to the men of Cologne as far back as the reign of Henry II. They have thus, as Sir Travers rightly pointed out, a distinct bearing on the political relations of England with Germany during that very stirring period when the contest between the Papacy and the Empire, in the persons of Frederick Barbarossa and Alexander III., was running parallel with the contest between Henry II. and Becket. We have no doubt that some of those who listened to the lucid exposition of Sir Travers Twiss made a mental application of this history to much later times, to other Emperors and Kings, and other Popes and Bishops. Apart, however, from this circumstance, the Paper read by Sir Travers Twiss supplies some valuable corrections of Lappenberg's account of the Charters, and places their date for the first time accurately on record.

The Cologne Conference also discussed not a few questions of the day, such as International Copyright, Bills of Exchange, Affreightment, Monetary Conventions, Extradition, &c. It heard the views of Germans, Scandinavians, Dutchmen, Belgians, Americans and Englishmen. The American contingent indeed was a particularly strong one this year, including Hon. John Jay, Hon. David Dudley Field, and his brother Mr. Justice Field, of the Supreme Court, President Barnard, of Columbia College, and others.

There was no meeting of the Institute of International Law, the meeting which was to have been held at Turin having been postponed. There was not, however, a cessation of work on the part of the members, for the Committees on Maritime Capture and Oriental Mixed Courts held session at Wiesbaden, in September, when some of the subjects of the Turin meeting were discussed, and Reports were presented by Sir Travers Twiss, Dr. Gessner, M. De Martens, and others. It appears that some members of the Institute view favourably the adoption of the course to which circumstances have before now led them, of leaving the

space of two years between their Congresses, and devoting the intermediate year to meetings of Committees.

To come nearer home, the Social Science Association held a brilliant Congress in Dublin, under the Presidency of the Lord Chancellor of Ireland, Lord O'Hagan, who gave a most clear and interesting *résumé* of the progress of Legislation connected with Ireland during the twenty-one years since the Association last met in Dublin. The late Lord Chancellor, Rt. Hon. J. T. Ball, LL.D., presided over the Jurisprudence Department, and his Address will be in the hands of our readers. In the International Law Section the Special Question treated by Sir Sherston Baker, Bart., Don Arturo de Marcoartu, and Mr. C. H. E. Carmichael, M.A., gave rise to a long and animated discussion, in which Mr. Dudley Field, Mr. Commissioner Miller, Q.C., Mr. J. H. Edge, of the Irish Bar, and others took part, and expressed very varied views as to the expediency and utility of periodical Conferences for settling the affairs of the nations. In the Municipal Law Section, Mr. Joseph Brown, Q.C., directed attention to the Jury Laws, and initiated no small amount of debate over the *pros* and *cons* of that much vexed question,—a decidedly burning one, under the circumstances of time and place. We trust that the discussions thus carried on in the halls of Trinity College, Dublin, may prove an *auspicium melioris ævi* for Ireland.

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Before the universally lamented death of President Garfield, Guiteau's attempt at murder seems, amongst other effects, to have aroused a good deal of controversy in the American Press, both lay and legal, on the question of the judicial status of the Presidential office, and the proper treatment to pursue with regard to such attempts. There is, to say the least, a sharp divergence of opinion between two of our esteemed American contemporaries, *The Albany Law Journal* and the *Washington Law Reporter*. The former in its issue for July 16th last, contends that to make an assault with intent to kill the President or Vice-President a capital offence would be utterly inconsistent with the theory of American institutions. It is of course quite true that there is in the United States "no Royal Family, the extinction of which might lead to anarchy." But is it equally true, as our Albany contemporary also contends, that the Americans have "no privileged or necessary classes?"

Surely, in the United States as in other countries, whether Monarchical or Republican, the members of the two Chambers are alike "privileged and necessary," and the same may be said of Bench and Bar (in the sense in which they are "privileged" in all countries). For the working of the national Constitution the co-operation of these various classes is needed in their several degrees. *A fortiori*, a President is the necessary culminating point of a Republican Constitution, as a King or Queen, or Emperor is of a Monarchical. And the real gist of the matter seems to us to be in the representative character of the King or President. That is why we should argue that the attempt upon the life of a Ruler is *prima facie* a political offence; a crime, no doubt, but still a political crime. The attempted assassination of President Garfield is therefore to our mind placed in a clearer light by the *Washington Law Reporter* in its issue for July 27th last, when it says, in the course of an editorial article on "Assault with intent to kill," that "it was not the man but the *officer* that was assailed—not the individual, but the President. His attempted assassination was because he was the President of the United States, not because he was James A. Garfield; nor for any act of his as James A. Garfield, or from personal malice." And in contradistinction to the tenor of the view maintained by the *Albany Law Journal*, we must say that the language of the *Washington Law Reporter* appears more accurate, as well as more in harmony with our own contention, when it urges that "the life of the officer who represents the 50,000,000 citizens of the United States is certainly of greater value to the Republic than that of any citizen." It is, perhaps, scarcely necessary to add that we should advocate the same views with regard to the President of the French Republic, or the Emperor of Russia.

* * *

Juridical Science has sustained severe losses of late alike in Europe and the United States. While we were at press with our last number we received the tidings of the death of one of the most distinguished American publicists of the present day, Hon. William Beach Lawrence, in whom we had specially to regret one who had been a contributor to these pages. As we are at press with our current number, we learn the sad news of the sudden death of Professor Bluntschili. Both of these eminent Jurists will be a severe loss to the Institute of Inter-

national Law, in whose proceedings they had taken a leading part from its foundation. Mr. Beach Lawrence, indeed, at his age, and from the other side of the Atlantic, was obliged to do his work for the Institute mainly by the pen, while the face of Dr. Bluntschli and his genial presence will be much missed from the meetings alike of the Institute and of the Association for the Reform and Codification of the Law of Nations, in whose foundation Conference he took part at Brussels in 1873, shortly after the Ghent meeting at which the Institute had been founded. We ourselves, who had travelled from the shores of the Adriatic to be present at the Brussels Conference in the autumn of 1873, well remember the judicious moderation of Dr. Bluntschli's attitude, holding in check, as it were, the occasionally excessive zeal of other more ardent temperaments in that very interesting microcosm of modern International thought. We saw him last at The Hague, but we never ceased to follow with the deepest interest the various expressions of his mind on questions of International importance. Sometimes we were obliged to differ from his views, and we differ from some of them to this day. But we always knew and remembered the weight which attached to his opinions, and for that very reason we have before now felt bound to give expression to our own dissent, so that, at least as far as we were concerned, judgment should not go by default. But we greatly regret that Dr. Bluntschli will not be heard in exposition of his own views at the next meeting of the Institute in Turin, where it is probable that one of the points upon which we had occasion to differ from him most widely—the question of Extradition—will be among the subjects of discussion. It must be some consolation to his brother Jurists at home and abroad to remember that the very suddenness with which Dr. Bluntschli was taken from among them prevented any failing of powers from illness. He was taken at a ripe but also a green old age, full of life and mental vigour, engaged not only in the work of the Institute of International Law, but pledged as a literary fellow-worker with two of the most recent products of the intellectual life of his country—the *Centralblatt für Rechtswissenschaft*, of Stuttgart, to be edited as a monthly review of Jurisprudence, by Dr. Von Kirchenheim, "Docent" in Law in his own University of Heidelberg; and the yet broader *Auf der Höhe*, a review intended, so we gather, to uphold the "brotherhood of Humanity"—whatever that may mean in the minds of its con-

ductors. To Dr. Bluntschli we do not doubt that such a programme meant something like that "Perfect Social Order" which, as we note elsewhere, has been of late so enthusiastically set before the Legal Profession in the United States by the Hon. Stanley Matthews.

Swiss by birth, German by his University Education and the greater part of his subsequent Professorial-career, Dr. Bluntschli will be lamented in both countries as a direct loss to each of one of her most distinguished children. His Zurich Code will be a monument for Switzerland to cherish. His works on Political Science and International Law are heirlooms for all lands. At the age of seventy-four, while yet full of life and of work, Johann Caspar Bluntschli is lost to us. But his books remain, and they will long be studied by those who would follow the workings of a master mind among the Jurists of the Nineteenth Century. We are glad that such an one should have been among the select band of Members of the Institute of International Law chosen by the University of Oxford for the degree of Doctor of Civil Law, "*honoris causâ*," at the Oxford meeting of the Institute.

Reviews of New Books.

Life of John, Lord Campbell, Lord High Chancellor of Great Britain. Edited by his daughter, the Hon. Mrs. HARDCASTLE. John Murray. 1881.

The subject of this interesting biography was in many respects a typical Scotsman, and his success in life was no less typical. Typical also was Lord Campbell in his possession of the strong national feeling of kinship which enables a Scotchman to talk quite naturally of "his cousin, the Duke," when he sees him and mourns over him as a "watering-place lounge," and therefore not doing his duty by his rank. For a clansman is jealous for his chief, as well as proud of him. The filiation of Lord Campbell's own branch appears never as yet to have been clearly made out. Lord Campbell himself is a thoroughly honest genealogist, and tells us as much. We are not sure that his own mind was quite made up on the point, for there are passages (*e.g.*, where he is describing the blazon on the seal of arms he has had cut) in which he seems to speak as though he came off the Breadalbane line, while in other places he asserts descent from Donald, Abbot of Cupar, 1526-62, fourth son of Archibald, second Earl of Argyle. Bearing in mind the existing social conditions of Scotland, we doubt whether the monumental inscription cited by Lord Campbell in itself carries all the weight he ascribes to it, and we should have been glad if he had set out the further evidence which he mentions. Abbot Donald was higher in favour with King than with Pope; twice "postulated" by the Crown for vacant Scottish sees, he never obtained the Papal assent. In the Parliament of 1560, which annulled the jurisdiction of the "Bischope of Rome callit the Paip," sat Donald, Abbot of Cupar.

Ambitious, as many of his young countrymen were, the career of the future Lord Chancellor could not be restrained within the narrow borders of the "Kingdom of Fife." He might have become a quiet country minister, or he might have settled down as a local "writer," or even, if so venturesome, have passed Advocate, and taken to the Northern Athens; the home of Scott and Jeffrey, the Alma Mater of Brougham and Horner, and other

bright stars that have long since set. But he would be none of these. He must needs go South, and push his fortunes alone in London, without kith and kin to stand by him shoulder to shoulder in the already overgrown, overstocked mart of the English Bar. His confidence in his own powers must evidently at times have been sorely tried, but it never quite deserted him, and in the end amply justified his resolve. We do not think that his father ever altogether realised his son's success, or even thoroughly got over the blow of his not receiving the patronage of the local magistrates in a case where the "Kingdom" was concerned. Perhaps John Campbell himself was a little sore about it, too. His language on the occasion is a trifle too contemptuous of the home magistracy, to be, we think, quite a sincere exponent of his real feelings. For, after all, one does like to be a prophet in one's own country, if only to falsify the proverb.

Yet, through it all, the Fife man was there; under the struggling young barrister who gave his clerk half-crowns he could ill afford; under the well-to-do rising barrister, making his name and his fame, and lining his pockets with something better than half-crowns, if his father would but believe him; and again the Fife man was much on the surface in the first Lord Campbell, "of St. Andrews, in the county of Fife."

The two volumes of Mrs. Hardcastle's *Life* allow the Chancellor mainly to tell his own story, and very quaintly and pithily he often tells it. His drawer full of Lord Ellenborough's *bad* decisions would have formed matter for a curious Appendix, had the contents of the drawer escaped the flames. But Providence seems to have been on the side of Ellenborough, and he is only known by the *good* decisions which Campbell reported. The accounts of circuit life on the Home and Oxford Circuits are full of characteristic touches. Even the "Council Board" is not sacred; the new Privy Councillor's keen glance takes in all its features that struck him as at once ludicrous and melancholy. A Premier crippled by gout—a Lord President with his arm in a sling—a Queen gracious but silent—a melancholy hand-shaking from his brother Councillors—and one new brother who could not even find a seat at the "Board," but had to be relegated to a small side-table—such a scene was certainly not calculated to strike the beholder with awe of monarchical institutions. One wonders whether things were better managed when Queen Eleanor, of famous memory, was "Lady Keeper

of the Great Seal," as Lord Campbell discovered her to have been.

Of the *Lives of the Chancellors* we get interesting glimpses: how their historian "took most pains with Lord Bacon," but was, "of all his heroes, most attached to Sir Thomas More." On some points of Law Reform, Lord Campbell's views would seem rather shared by our Canadian brethren. He thought the "universal fusion of Law and Equity" was "nonsense:" and the Dominion Judicature Act, establishing this fusion in Canada, appears to awaken small enthusiasm in the legal profession there. Nevertheless he was no slave to mere "custom," and ever strove for what he held to be the "true principle on which legal reform should be conducted." In this, as in other features of his life-work, Lord Campbell was true to his character. He would suffer no waste of time, no mere verbiage on the part of counsel; he wasted no time himself, he could not allow others to do so. He was always and eminently, honest John Campbell. A Scot to the last, John, Lord Campbell, *Iustitiæ tenax*, was laid to rest where he aye wished to rest, in the very holy ground of a great Scottish Abbey.

A Digest of the Law of Bills of Exchange, Promissory Notes and Cheques. By M. D. CHALMERS, M.A., of the Inner Temple, Esq., Barrister-at-Law. Second Edition. Stevens and Sons. 1881.

We are glad to see a second English edition of Mr. Chalmers's useful book, which has already enjoyed the at present probably somewhat barren honour of an American reprint.

The subject is one of permanent interest to large and influential classes of the community, and the question of the possibility of assimilating the laws of the various European States has for some time past been much under consideration. Under the name of "Principles for an International Law to govern Bills of Exchange," a certain number of heads of a future Draft Code have been discussed at a series of Conferences of the Association for the Reform and Codification of the Law of Nations. It would probably help forward the further discussion of so important and at the same time difficult a problem, if Mr. Chalmers were to print these "Principles" in a future edition and also give them the benefit of his criticism.

The form adopted for his work by Mr. Chalmers is well adapted to secure clearness, and his constant reference to parallel passages in the French Code and the German Law of 1848-9 render it additionally valuable. For the subject is one necessarily of international application and requires to be treated from an International as well as a National point of view. The German Law of 1848-9, amended by the Novels of Nuremberg, is a remarkable work in more ways than Mr. Chalmers puts on record in his interesting Introduction. The outcome of the strong uprising of a national feeling in Germany, it was drawn up under the influence of Mohl, the Minister of Justice, and countersigned by the Archduke John, the Lieutenant-General of the short-lived Empire of Germany of the year of Revolution, 1848. It is, in a certain sense, one of the most lasting and practical memories left by the National Parliament which sat at Frankfort, and which offered the Imperial Crown of Germany to the head of the Electoral House of Hohenzollern, and the Lieutenancy of the Empire to an Archduke of the Imperial House of Lorraine-Austria.

The Bill of Exchange, as has been well remarked by a former representative of the Brazilian Empire at the Court of St. James's, "is now-a-days above all things an instrument of credit and a circulating medium." To the Law of this "medium" Mr. Chalmers furnishes an excellent key, which has been tested and found serviceable on both sides of the Atlantic.

Common Precedents in Conveyancing, together with the Conveyancing and Law of Property Act, 1881, and the Solicitors' Remuneration Act, 1881. By HUGH M. HUMPHRY, of Lincoln's Inn, Barrister-at-Law. Stevens and Sons. 1881.

Greenwood's Manual of Conveyancing. Sixth edition. By HARRY GREENWOOD, M.A., of Lincoln's Inn, Esq., Barrister-at-Law. Stevens and Sons. 1881.

A Practical Introduction to Conveyancing. By HOWARD Warburton Elphinstone, of Lincoln's Inn, Barrister-at-Law. Maxwell and Son. 1881.

The New Conveyancing Acts. Including the Conveyancing and Law of Property Act, 1881, and the Solicitors' Remuneration Act, 1881, with Introduction, Notes, and Forms. By SYDNEY E. WILLIAMS, of Lincoln's Inn, Esq., Barrister-at-Law. Stevens and Haynes. 1881.

By the general public the last session of Parliament is almost entirely identified with the passing of the great "Message of Peace" to Ireland but by the legal profession it will not improbably hereafter be looked back upon as the date of a new and important departure in the science and art of Conveyancing. The changes introduced by the "Conveyancing and Law of Property Act, 1881," alike in the form of assurances and in the law of property are both presently important and far-reaching in their possible effect. And notwithstanding the failure of previous efforts at Conveyancing reform—such as Lord Cranworth's Act and the Statute 8 and 9 Vict., c. 119—and the fact that the present enactment is for the most part permissive and not imperative, there is good ground for anticipating that the present attempt will not prove abortive. For years past both the opinion and practice of Conveyancing counsel have favoured brevity and conciseness in the drafting of assurances: the great, and indeed, so long as it remains, almost insuperable, obstacle has been the vicious system of paying solicitors for deeds and documents according to their length, and on a scale which banished brevity by rendering it unremunerative. The passing of the "Solicitors' Remuneration Act, 1881" as a companion measure to the New Conveyancing Act, has now rendered reform possible by providing for the issue of General Orders placing the Conveyancing Costs of Solicitors on a rational footing. The Conveyancing Act will come into operation on the 1st of January, 1882, but as the General Orders, when made under the Solicitors' Act, are not to take effect until after having been laid before Parliament for one month, it is probable that at least six or nine months will yet elapse before the optional sections of the Act will meet with any extended adoption. The important changes effected in the Law of Property will however come into operation without delay. They include the various topics of sales, leases (more especially the first and equitable provision, sec. 14, restricting and relieving against forfeiture for breach of covenants and conditions), mortgages, trustees, married women, infants, powers of attorney, rent charges, and the provision (sec. 65) enabling the person interested in a residue of not less than 200 years of a term originally granted for not less than 300 years, to enlarge the term into a fee simple by a simple declaration to that effect in a Deed. Many other minor changes are introduced: and it may safely be predicted that almost every practitioner will find it necessary to carefully peruse the Act in

some one or other of the various forms in which it has been and will be published. Mr. Sydney Williams' edition of the Act is preceded by an intelligent Introduction in which the changes introduced are summarised. The sections are elucidated by short intercalated notes which give cross references to the different sections, and endeavour tentatively to interpret the language of the enactment by the light of cases decided *in pari materia*. It will be found a convenient vehicle for studying the Acts.

The other edition of the Acts now before us forms Part II. of Mr. Humphry's "Common Precedents in Conveyancing." It has the advantage for the practitioner of appearing side by side with a set of Precedents framed in accordance with the existing formal system, which it is intended ultimately to so greatly modify. The author has not ventured on any annotation of the Act further than to give occasional references to the forms in Part I., with a view to their adaptation, when desired, to the requirements of the Act. The collection of Precedents is sufficiently comprehensive for ordinary use, and is supplemented by concise foot-notes mainly composed of extracts from statutes necessary to be borne in mind by the draftsman. The usefulness of Mr. Humphry's volume would have been augmented if he had included in it a set of Precedents drawn in accordance with the new Act to correspond with those which he has given us, drawn on the old lines.

Whatever may be the changes which the formal part of Conveyancing is destined to undergo, it will still be necessary for the articulated clerk and the junior practitioner to study and keep as books of reference, such manuals as Mr. Greenwood's "Practice of Conveyancing" and Mr. Elphinstone's "Practical Introduction to Conveyancing." The sixth edition of the first-named work now before us has been thoroughly revised by the author and partly recast. Part I. has been broken up in chapters and re-arranged in accordance with what may be termed the natural sequence of conveyancing transactions. The Precedents in Part II. have been rendered more concise, several new forms have been added, and a few old ones omitted. The Table of Contents and the Index have also been augmented and considerably improved.

The volume by Mr. Elphinstone, originally published in 1871, is based upon a course of lectures delivered by the author before the Incorporated Law Society. It is full of practical

directions for the guidance of artied clerks in their study of conveyancing and is calculated to afford them very effective help. The present edition has been carefully brought down to date and presents a trustworthy exposition of the subject of which it treats. Like Mr. Greenwood's volume, it labours under the disadvantage of having been issued prior to the passing of the New Conveyancing Act, and it will therefore be necessary for readers to have a copy of that statute by their side for concurrent reference.

A Treatise on the Specific Performance of Contracts. By the HONBLE. SIR EDWARD FRY, one of the Judges of the High Court of Justice, B.A., and Fellow of University College, London. The Second Edition. By the AUTHOR and WILLIAM DONALDSON RAWLINS, of Lincoln's Inn, Esq., Barrister-at-Law, M.A., and late Fellow of Trinity College, Cambridge. Stevens & Sons. 1881.

The long period of twenty-three years which has elapsed since the first issue of Mr. Justice Fry's standard work renders it unnecessary to point out specially the need for this new recension, which embraces a very considerable amount of rewriting on the part alike of the distinguished author and of his *collaborateur*. The result of their joint labours is a work at once scientific and of directly practical utility, carefully brought down to date.

In a book so full and yet so condensed, it is practically impossible that we should do more than touch on one or two of the many features which strike us in our reading. And they will mainly be points on which we should have welcomed something more from the pen of the learned Judge. There is much evidence dispersed through the work of the author's familiarity with some of the more recondite sources of Western Jurisprudence. But occasionally the knowledge shown is just enough to lead us to wish that the author had gone a step or two further in the construction of the argument suggested but not drawn out. Thus Sir Edward Fry refers, at a very early stage in his treatise, to the probable influence of the Canon Law on the moulding of the Equitable Doctrine of Specific Performance. In fact, it appears to be his view that the origin of the doctrine must be sought in the Canon as distinguished from the Roman (*i.e.*, the Civil) Law. So far we benefit by the

expression of the learned author's views. But when we ask ourselves, as we necessarily do, to what source, other than a Roman one, we are to refer this Canonical doctrine, we get, unfortunately, no further help from Mr. Justice Fry. In itself, of course, the view advanced has very strong elements of probability in its favour, but we have to get behind the statement to see what it involves. If the source was not Roman, what was it? The Canon Law of Western Europe, we are of course ready to admit, contained a certain admixture of non-Roman elements. These were chiefly due to the influence upon the Church of the so-called Barbarians, who gradually succeeded the Roman element in the government of large portions of the Western Church. For the Barbarian strain in Western Canon Law, therefore, it would seem as though we ought to turn to the various *Leges Barbarorum*. Whether such researches would be crowned by success may be another question, but we should have been glad to know how far Sir Edward Fry thought success probable in that direction, or whether he could suggest a better. It is possible, indeed, that National and Diocesan Councils, which Mr. Melville M. Bigelow, in his recent work on the *History of Procedure in England* suggests as a by no means unimportant factor in the development of Procedure, might also throw some light upon the question. At present we must confess it still seems to us an obscure one. Historically, no doubt, the jurisdiction of Ecclesiastical Courts over civil claims, such as is to be traced, for instance, in the Penitential of Theodore, may be referred to its origin in those early days of the Church when as yet the Roman Empire was Pagan, and causes between Christians were settled *intra ecclesiam* by the Bishop. The subsequent blending of Civil with Ecclesiastical functions and dignities in the persons of Bishops, who were often also appointed to the onerous post of *Defensor Civitatis*, has tended still further to complicate Western Legal History. We have incidentally remarked upon the familiarity shown by Mr. Justice Fry with the works of Canonists, and even Casuists. We have also to recognise his careful study of the great French Jurist, Pothier, and also of that Code which Pothier so largely influenced. But in saying this we have also to regret the absence of a little further extension of Sir Edward Fry's reading. It would have been interesting, for instance, if he had given us his views on later French Commentators,

such as Aubry and Rau, Laurent, &c. Pothier's position is deservedly a very high one, but it is not beyond criticism. M. Laurent may be named as perhaps the most extreme of his adversaries and critics, and his value as such is weighed impartially in a very recent article by M. Laborde in the *Revue Générale du Droit* (Paris, Thorin) for July-August, and Sept.-Oct., 1881, on the Theory of Cause in Relation to Obligations. M. Laborde, while discriminating in his estimate of Pothier in relation to the Code Civil is in the main with him on this matter as against Laurent. It is necessary, indeed, to go much further back than Pothier for a right apprehension of the texts of the Code Civil which are most closely connected with the subject-matter of Mr. Justice Fry's book. We must look to very various sources, as has been shown by M. Esmein, in an interesting article on Contracts in early French Law, in the *Nouvelle Revue Historique de Droit* (Paris, Larose et Forcel) for Nov.-Dec., 1880, and Jan.-Feb., 1881; to the *Somma de Legibus Normanniæ*, the *Livre de Justice et de Plet*, the Customals, and the mediæval commentators, nay more to foreign sources of information, such as the Statutes of Bologna and Milan, as well as to that yet earlier source already mentioned, the *Leges Barbarorum*. These suggestions are here thrown out, in the hope that on a future occasion, perhaps in a separate form, even before the next issue of his old established Text-book, Mr. Justice Fry may see fit to enrich Legal Literature by the publication of his views, at greater detail, on some points of Legal History only touched *obiter* in the present edition of his valuable *Treatise on Specific Performance*.

The Law Relating to Sale of Goods and Commercial Agency. By ROBERT CAMPBELL, M.A., of Lincoln's Inn, Barrister-at-Law, Advocate of the Scotch Bar, late Fellow of Trinity Hall, Cambridge. Stevens and Haynes. 1881.

In this new and considerable work from the practised and scholarly pen of the author of the *Law of Negligence*, and editor of the *Student's Austin's Jurisprudence*, we recognise, even from the necessarily hurried perusal which alone has been possible, the presence of the same qualities which have won so much esteem for his former works.

The subject of Mr. Campbell's present treatise is, as he acknowledges, very wide, and he has therefore at times been

obliged to restrict the field of his discussions. Writing professedly in the character of an English lawyer only, it is nevertheless evident throughout, whenever occasion offers, that Mr. Campbell does not close his eyes to the benefits which may be derived from drawing both on Roman and Scottish Law for illustration, example, or contrast. We should have liked an explanation from the Scottish side of Mr. Campbell, as to the peerage intended to be represented in the case cited at p. 138, as "A Scotch case, *Countess of Dunn v. Alexander*." We thought we knew something of the Scottish peerage, but find ourselves quite at fault here.

Mr. Campbell, throughout, takes up an independent position as a text-writer, citing, and where necessary to the expression of his own opinion, criticising the works of earlier writers, such as Benjamin, Blackburn, Lindley, &c., and criticising also where the circumstances of the case demand it, judgments which are in conflict with each other. On *Pordage v. Cole*, and its bearing on *Simpson v. Crippin*, and on Rescission generally, we should like to hear Mr. Campbell's views after reading the arguments advanced by Mr. McMurtrie in the *American Law Review* for October. At page 370, *seqq.*, he discusses the conclusions arrived at by the Judicial Committee of the Privy Council and the Court of Appeal respectively, in *Rodger v. Comptoir d'Escompte*, and *Leask v. Scott*. Mr. Campbell's own opinion here agrees with the Court of Appeal, for the reason carefully set out in his consideration of the cases, that the Judicial Committee appear to him to have mixed up two different doctrines, viz., that relating to negotiable instruments, and that relating to estoppel, or representation. The entire discussion is worth attentive study, both in itself and as a sample of Mr. Campbell's treatment of difficult points, where doctors disagree. A good illustration of his careful exposition of the parallelisms and contrasts between the English and Scottish meaning of identical expressions will be found at page 401, *s.v.* "Factor and Agent." The American interpretation of "Factor," we may remark, is the English as distinguished from the Scottish, *teste* Story and Wharton on Agency, both cited for the purposes of the judgment in *Delaume Bros. v. Agar and Lelong* (1 *McGloin's Reports, Courts of Appeal, La.* pt. i., pp. 97, *seqq.*) The portions of Mr. Campbell's Treatise devoted to Maritime Law, and to the Law affecting the Stock Exchange, are full of valuable matter, which we can only thus

summarily indicate. His book will, we are convinced, prove of great service as a thoughtful and clear exposition of a branch of Law of practical interest, not only to the Legal Profession, but also to the merchant, the shipper, the underwriter, and the broker, and to the mercantile community in general. The Table of Contents is analytical and remarkably full, being in fact almost an Index within an Index.

Principles of Contract. By FREDERICK POLLOCK, LL.D., Edinburgh, M.A., and late Fellow of Trinity College, Cambridge, and of Lincoln's Inn, Esq., Barrister-at-Law. Third Edition, revised and partly re-written. Stevens and Sons, 1881.

In so highly Contractual a state of society as that which we have reached in our progress from Status to Contract, it is natural that works like that of Mr. Pollock, now before us, should be found to supply a constantly growing demand. We have already, more than once, expressed the pleasure which his scholarly treatises afford us as a matter of reading, apart from their value to the practitioner. The present considerably enlarged and revised edition of his book on *Contracts* will be welcome to the Profession from both the points of view above indicated.

Mr. Pollock, we see, urges the desirableness of a systematic publication of the Year Books, which are, for all purposes of practical utility to legal scholarship, as good as non-existent. There is much to be said in favour of this suggestion as a branch of the duties of Government, where publication of rare or generally inaccessible works has been recognised as such, as has been the case with most of the Governments of Europe. But the particular course proposed is one not to be lightly undertaken, and we do not feel sure that Mr. Pollock has weighed such arguments as are incidentally advanced against the authority of the Year Books by a distinguished American lawyer, Dr. W. G. Hammond, in the course of his notes to Lieber's valuable work on *Hermeneutics*. In the Note which he devotes to the almost typical Year Book case, the case of Sibyl Belknap, Dr. Hammond remarks that he has never been able to find any ground for the common belief that these Books were edited by official and salaried reporters, and that the investigation of Sibyl Belknap's case is "not encouraging to those who would regard them as official oracles of the Common Law in its

most important period." Nay more, he goes on to say with yet greater and more direct severity of judgment in this particular instance, "the original case has been for four hundred and seventy-five years entirely misstated . . . even the parties in it have been exactly transposed, and there never was 'a woman who brought the King's writ, not naming her husband, joined by the oak of the law.'" This, from the pen of one who has so long held office as Chancellor of the Law Department of a University, is, it must be admitted, a pretty stout application of the quarter-staff of criticism! But it tends ultimately, nevertheless, in the same direction as Mr. Pollock's more friendly view of the Year Books, since Dr. Hammond himself urges the desirableness of a thorough investigation of their contents. For, as he says, "they have an importance in the history of our law that would repay the most careful investigation of their authorship; and it is not creditable to our profession that no effort has yet been made to ascertain the exact amount of reliance that can be placed on their statements."

We are glad to find that Mr. Pollock continues to watch the progress of juridical movement abroad as well as at home. The labours of the Indian Government and the most modern additions to Foreign Codes receive due notice at his hands. The Swiss Federal Draft Law on Obligations, which he mentions in a note to his Addenda, is a very interesting specimen of recent legislation on the subject. It had the advantage, almost peculiar to the circumstances of the Helvetic Confederation, and which Mr. Pollock scarcely brings out into sufficient relief, of being drawn up by a committee most carefully balanced so as to represent the various and sometimes conflicting currents of Juridical Thought which divide the country. To a certain extent, therefore, it might be described as a work of compromise, but the compromise itself would, perhaps, better be described as the nice adjustment of the several influences which exist side by side in Switzerland, and work together on the whole so harmoniously. A Law drawn up with the assistance of Jurists such as Bluntschli and Rivier, co-operating with representative men of the French, German, and Italian Cantons, has very high claims upon our consideration. On another Foreign Code, cited by Mr. Pollock, the Spanish Code of Commerce, we think it well to point out that his reference at p. 674 is inapplicable to the Draft Code of 1880, published during the current year in

accordance with the Law of 7th May, 1880, and still, we believe, awaiting the Royal Sign Manual. Art. 237 of the Draft Code deals with an entirely different matter from that of the Article so numbered in the Law which Mr. Pollock cites. By Art. 90 of the Draft of 1880, the value of the subject of litigation arising out of a contract of sale in market overt (*celebrado en f  ria*), and which may be either for ready money or under writing (*al contado o    plazos*) is fixed at a sum not exceeding 1,500 pesetas, *i.e.*, in round numbers, £42.

We have dealt at greater length with Mr. Pollock's book than we can usually spare for a new edition of a well-known text-book. Nevertheless, it will be obvious that much is left untouched of the wide field which his work covers, and for which we must refer our readers to Mr. Pollock's own most interesting and suggestive Treatise.

McGloin's Reports of Cases Argued and Determined in the Various Courts of Appeal of the State of Louisiana, Vol. 1. Parts I. & II. New Orleans: F. F. Hansell. 1881.

We have received the first instalment of what promises to be an interesting series of Reports, carefully prepared for press by the Hon. Frank McGloin, one of the Judges of the Courts of Appeal of his State.

From several points of view Louisiana is of special interest to Jurists of the Old World, alike in Great Britain and on the Continent. For in her Courts we shall find Pothier, Troplong, Mass  , and other French commentators cited as freely and as necessarily as the usual English and American authorities. Louisiana is not only a Code State, but a State drawing the primary inspiration of its Jurisprudence from the Civil Law of the Western Empire. We have noticed several judgments in the parts before us to which we hope to call the attention of our readers as soon as space admits. *Delaume Brothers v. Agar and Lelong*, *Louisiana Ice Co. v. State National Bank of New Orleans*, both by McGloin, J., and *D. F. Kenner v. Allen and Syme*, by Rogers, J., are among those which strike us most either as illustrating features peculiar to Louisiana Courts, or as contributing definitions of commercial terms, an acquaintance with which may be both interesting and useful to the legal Profession in our own country.

The *Washington Law Reporter*, (Law Reporter Publishing Company, Washington, D.C.), edited by A. H. Jackson, we have already cited in another part of our current number. It has special claims to attention as the only Legal Journal published in the Federal Capital. The editorial and other articles embrace subjects of varied interest, both practical and theoretical. The cases in the U. S. Court of Claims are reported, as well as those decided in the District Court of Columbia, and in the Supreme Court of the United States. We must say that the picture which our Washington contemporary has recently drawn of the dangers to personal liberty to which the peculiar conditions of the District of Columbia expose Americans from other parts of the Union, scarcely seems favourable to the selection of Washington as a place of residence. And there must surely be some blots in the Federal Constitution, which should be speedily remedied, if such arbitrary measures in the way of wrongous imprisonment as are described can be taken under the shadow of the Capitol. Several other points of Constitutional Law respecting the power of Congress to imprison witnesses, the reference to Debates in Congress by way of assistance in the construction of Statutes, &c., we shall hope to refer to on a future occasion in the course of a discussion of the principal European and American Constitutions, in which we shall consider at greater length than is at present possible to us, the valuable writings of M. Demombynes, Dr. Cooley, Dr. Hammond, Mr. Hurd, and the late Mr. Beach Lawrence.

A Digest of the Law of Scotland, with special reference to the Office and Duties of a Justice of the Peace. By HUGH BARCLAY, LL.D., Sheriff Substitute of Perthshire. Fourth Edition, revised. Edinburgh: T. and T. Clark. 1880.

Our old and valued contributor, Sheriff Barclay, has come once more to the front with a new and carefully revised edition of his standard work, which, indeed, will prove a useful addition to the library, not only for the Great Unpaid themselves, but also for the practitioner, in England as well as in Scotland. For in these days of close and constant intercourse between the two countries the necessity for each to know something of the other's law very frequently arises. And, in point of fact, Sheriff Barclay's *Digest* is a Scoto-English Law Lexicon, explaining at greater or less length most of the terms which

may well have an unfamiliar appearance to the eye of the practitioner in the country which is not that of their respective domiciles. It may be that English Counsel want to be instructed as to the "potency of the Scotch word *allenarly*." They will find enough for ordinary purposes *sub voce*, p. 206, though we should recommend their turning also to the article *Conjunct Rights*, p. 268, and reading a good example of the "potency" of the word, in section 2 of that article, from Watherstone, F.C. 5, which is still more strongly illustrative thereof. Or there may be a question of the Law Merchant, and a point regarding "missives:" on turning to the article under that head, it will be seen at once that "missives *in re mercatoria*" are exempt from the solemnities of legal deeds, but must be stamped before they can be received in evidence. Such Scottish mysteries as Lawburrows and Multiplepoining, Fiars and Intromissions, *cum multis aliis*, all have their respective characteristics duly summarised. The principal provisions of all important Acts, whether dealing with Factories, Forests, Game, Trade, Husband and Wife, Master and Servant, Merchant Shipping, or any of the other constantly recurring questions of every-day life, are also set forth and carefully annotated to date.

The Times have changed greatly in many things, even since the first edition of Sheriff Barclay's *Digest* appeared in 1851. Still more have they changed since the first enactment concerning Justices of Peace in Scotland, 1587, c. 82. The duties of the Justices have altered with the Times. No longer are they required, as by the Act 1656, to "search out and present persons suspected of being Papists;" they are practically sinecurists in the matter of the duty of "informing the King's Majestie's Council and His Majesty's Advocat, at the least once in the year, of forestallers and regraters of mercats," the statutes forbidding whose offences have fallen into desuetude. But what was required of Justices in the quaint language of the Act 1587, is affected by no change of Times. Justices of Peace must still be "honourable and worthy persons . . . knawen of honest fame, and esteemed na maintainers of evill or oppression;" they must still, as ever, be "experimented in the lovable lãwes and customes of the realme, . . . in the furtherance of justice, peace, and quietnesse." To all such persons, Sheriff Barclay's well-known *Digest* must commend itself anew in its present issue. The Justice's

Library needs to be kept up to the mark of the latest edition, and in the present revision much has been done by the author and his fellow-workers to increase the value and practical utility of the book on both sides of Tweed. The English portion has had the benefit of passing through the hands of Mr. W. P. Eversley, M.A., B.C.L., of the Inner Temple, Barrister-at-Law, and will be found to add materially to the extent of the field covered by the *Digest*. There is, no doubt, more work remaining for future editions in the English articles than in the Scottish, where the venerable Sheriff was himself naturally more at home. But, taken as a whole, we think that the new edition of Sheriff Barclay's *Digest* will prove a most useful collection of *Responsa Prudentum* for the practitioner on points of daily occurrence in the practice both of Scottish and of English Law.

The Elements of Economics. By HENRY DUNNING MACLEOD, M.A., of Trinity College, Cambridge, and of the Inner Temple, Esq., Barrister-at-Law. Vol. I. Longmans. 1881.

We have already, on more than one occasion, expressed our high sense of the value of the several works which Mr. H. Dunning Macleod has devoted to the exposition of that science of Economics of which he is so unquestionably a master. The learned Lecturer on Political Economy in the University of Cambridge, here gives us the first instalment of a book which promises to fill a void that hitherto existed between his great work on the *Principles of Economical Philosophy*, itself not yet completed, and his useful students' handbook, *Economics for Beginners*. There is, of course, and that unavoidably, a certain amount of going over the same ground in these various books. This, however, besides being unavoidable, is probably directly useful to the student with whom repetition is frequently the only means of awakening the faculty of apprehension.

In the present treatise, Mr. Macleod steers a middle course between the fulness of development of his *Economical Philosophy* and the skeleton-like terseness of his *Economics for Beginners*. It is, therefore, well calculated for use in the higher forms of schools, and at the Universities. It is full of life and even of picturesqueness. The judgments passed, are passed on evidence brought forward from the writings of the men who are judged, and our own interest in the book is rendered the keener by the

frequency and strenuousness with which Mr. Macleod points out the close connection between Economics and Jurisprudence.

Time after time, indeed, the learned author cites definitions from the Digest to enforce his views on the science of Economics. We do not know of any other text-books on this science which so vividly illustrate the value of Roman Law as an authentic source of interpretation for Economical terms. Not unfrequently, we suspect, this interpretation will have been brought home to the reader for the first time by Mr. Macleod. The Digest, the *Basilica* of the Eastern Empire, the Canon Law of Western Europe, the *Lex Mercatoria*, and the early Maritime Law of the coasts of the "tideless midland sea," all are made to play their part in explaining the language of Economics. On the *Basilica*, however, we would suggest that Mr. Macleod's language might be misleading to the student, where he speaks of it at p. 41 as a "new code." It was in point of fact, not an original compilation, but a *rifacimento* of the Greek text of Justinian with its commentaries, and the *Procheiron* of Basil,—embracing an amalgam of the Institutes, the Digest, the Codes and the Novels, but the whole was still based upon the legislation of Justinian, and did not really constitute a new departure in Jurisprudence.

A student armed as Mr. Macleod arms him, is doubly fortified. He will turn, it may be hoped, from his Digest or his Gaius, to his Economics with a fresh interest and a fresh understanding, and when he finds a difficulty in his Economics he will remember the master-keys which he has at hand in his Roman Law. We shall look forward with keen interest to the forthcoming volume of Mr. Macleod's *Economics for Beginners*, as well as to the completion of his *Economical Philosophy*.

SMALLER BOOKS AND PAMPHLETS.

Mr. Alfred Bailey, M.A., formerly Stowell Civil Law Fellow of University College, Oxford, whose interesting work on the *Succession to the Crown* was noticed in this Review, has published a short pamphlet on *Real Property Law Reform in England* (Spottiswoode and Co., 1881), a subject of the day, in which he urges with much force that "settlements must no longer be used to bolster up improvident families," and advocates the "family estate being put more and more in the power of the head of the family," on the lines of Lord Cairns's Settled Land

Law Bill, with an ultimate registration of titles, to serve as an "*ultima securitas*."

Mr. Sidney Smith bears a widely-famous name, and devotes himself, like a "preux Chevalier," to the task of proving, to his own satisfaction, the *Enfranchisement of Women the Law of the Land* (London: Trübner; Manchester: Ireland and Co., 1879). We do not think that the mediæval cases really tell in his favour. It is evident that £. s. d., and nothing more, was what it was desired to extract in such instances as those of the Abbess of Wilton and others, mentioned in the Parliamentary Writs, which have been brought forward by some of our contemporaries.

Interpleader and Attachment of Debts in the High Court of Justice and in the County Courts (Maxwell and Son, 1881), by Mr. Michael Cababé of the Inner Temple, presents a curious junction in one volume of two subjects having no logical connexion with each other. If this fashion is to be followed—which we trust will not be the case—the title pages of our law-books of the future will be slightly bewildering. "Stoppage *in transitu* and the Doctrine of Cy-près," and such like heterogeneous compounds, suggesting to the unwary student delusive affinities, may then be looked for. Mr. Cababé has, in fact, written two entirely distinct treatises, which, though bound up together, are kept separate and have each its own index. In his treatment both of Interpleader and Attachment—proceedings in constant and increasing use, and of considerable interest to the mercantile community—the author has given evidence of careful research and of ability to state his propositions with clearness and conciseness.

Mr. T. Eustace Smith, Barrister-at-Law, of the Inner Temple, has brought out a second edition, revised and not inconsiderably enlarged, of his useful *Summary of the Law of Companies* (Stevens and Haynes, 1881). In the present issue, the author has brought his book down to date, by incorporating a notice of the effect of the Acts of 1879 and 1880, and of the cases decided thereunder. Notwithstanding these additions, however, Mr. Eustace Smith's *Summary* retains its character as a concise and convenient manual of Company Law.

Mr. G. G. M. Hardingham, associate member of the Institute of Civil Engineers, has done good service to the commercial world, and to all who require a handy book of reference on Industrial Property, in putting together under the title of *British and Foreign Trade Marks*, (Stevens and Sons, 1881), a brief but

thoroughly practical compendium of British, Foreign, and Colonial Trade-Mark Law. From what we had ourselves observed regarding recent legislation in Denmark, Holland, and other countries, we can say that Mr. Hardingham brings his information well to date, and that his statement of the various laws appears to be both terse and accurate.

Mr. W. Shirley Shirley, M.A., Barrister-at-Law, of the Inner Temple, in his *Elementary Treatise on Magisterial Law* (Stevens and Sons, 1881), provides a useful introduction to the larger and more scientific works on a branch of Law, the study of which has been perhaps unduly neglected. An acquaintance with the principles and the statutes upon which the many subjects entering within the compass of Magisterial Law are dealt with, is both desirable in itself, and has now become additionally so as a matter for examination. Mr. Shirley's style is more familiar than is usual in legal text-books, but for the student that is probably not a disadvantage.

Quarterly Digest

ALL REPORTED CASES,

IN THE

*Law Reports, Law Journal Reports, Law Times
Reports, and Weekly Reporter,*

FOR AUGUST, SEPTEMBER, AND OCTOBER, 1881.*

By HENRY M. KEARY, of Lincoln's Inn, Barrister-at-Law.

Administration:—

- (i.) **Ch. Div. F. J.**—*Costs—Leaseholds—Executor's Right to Indemnity.*—When a testator's estate consists in part of leaseholds, his executor cannot, in spite of gross misconduct and delay, be deprived of his right to an indemnity, and he is accordingly entitled to have the estate administered by the Court.—*Howard v. Easton*, 45 L.T. 136; 29 W.R. 885.
- (ii.) **C. A.**—*Costs of Probate Action.—Legacy paid into Court—Set-off.*—Legatees who had brought an action against an executrix, who was residuary legatee, to set aside probate, were ordered to pay the executrix her costs of action. The executrix having paid the legacies into Court in an administration action, afterwards obtained a charging order against the share of one of the legatees in respect of her costs. The shares of the legatees had been assigned or incumbered: Held that the executrix was entitled to be paid the costs of the probate action out of the shares of the legatees in priority to incumbrancers.—*Knapman v. Wreford*, 50 L.J. Ch. 629; 45 L.T. 102.
- (iii.) **C. A.**—*Intestacy—Administrator—Domicil.*—The legal personal representative constituted by the *forum* of the domicile of a deceased intestate, is the person entitled to receive and give receipts for the net residue of his personal estate obtained in any country.—*Eames v. Hacon*, 50 L.J. Ch. 740; 45 L.T. 196; 29 W.R. 877.

Agreements and Contracts:—

- (iv.) **C. A.**—*Agreement to withdraw from Prosecution—Public Policy.*—An agreement to withdraw from a prosecution for any felony or any misdemeanour of a public nature, with a view to private benefit, is bad.—*Whitmore v. Farley*, 45 L.T. 99; 29 W.R. 825.

* Cases reported only in the *Law Times Reports* for August 29th, are postponed till the next quarter's Digest.

- (i.) **C. A.—Breach—Damages—Remoteness.**—Defendant agreed to supply plaintiff with stabling for his horses, but did not fulfil his contract, and plaintiff was obliged to take the horses about looking for stabling, and the horses caught cold: *Held* that plaintiff could recover damages for injury resulting from the illness of the horses.—*McMahon v. Field*, 50 L.J. Q.B. 552.
- (ii.) **Q. B. Div.—Contract to Warehouse—Removal of Goods—Loss by Fire—Liability.**—A. contracted to warehouse B.'s goods in a repository in K. street; and, afterwards, without B.'s knowledge, removed part of the goods to another repository, where they were destroyed by fire: *Held* that A. was liable.—*Lilley v. Doubleday*, 44 L.T. 814.
- (iii.) **Ch. Div. F. J.—Hiring Agreement—Month—Lunar or Calendar.**—In a hiring agreement of chattels for twenty-six months on payment of a weekly sum: *Held* that the months must be taken to be lunar months.—*Hulton v. Brown*, 29 W.R. 928.
- (iv.) **Q. B. Div.—Illegality—Contract to Indemnify Bail.**—Defendant became bail in £100 for the appearance of M. on a charge of embezzlement. M. paid £100 to defendant to indemnify him, and then absconded: *Held*, that M.'s trustee in bankruptcy could recover the £100 from defendant, although the contract was against public policy.—*Wilson v. Strugnell*, 45 L.T. 219.
- (v.) **C. A.—Sale of Goods—Implied Contract to be of Manufacturer's Make—Custom of Trade.**—On the sale of goods by a manufacturer of such goods, who is not otherwise a dealer in them, there is, in the absence of any usage in the trade to the contrary, an implied contract that the goods shall be those of the manufacturer's own make. When a written contract contains no express stipulation on a given point, and there is a custom of the trade on that point, the parties must be taken to have dealt with reference to that custom.—*Johnson v. Raylton*, L.R. 7 Q.B.D. 438.

Bank:—

- (vi.) **Q. B. Div.—Bank of England—Action on Note—Alteration of Number.**—The alteration of the number of a Bank of England note, is not such a material alteration as to affect the rights of a *bond fide* holder of the note for value.—*Suffell v. Bank of England*, L.R. 7 Q.B.D. 270.

Bankruptcy:—

- (vii.) **C. A.—Bankrupt's Property—Production of Deeds—Bankruptcy Act, 1869, s. 96.**—A witness, who had purchased personalty settled on the bankrupt's wife by a post-nuptial settlement, was ordered to produce the deeds relating to the transfer of the property.—*Ex parte Tatton, Re Thorp*, L.R. 17 Ch. D. 512; 45 L.T. 89.
- (viii.) **C. A.—Bill of Sale—Prior Act of Bankruptcy—Notice.**—When a bill of sale has been granted by a debtor who has committed a prior act of bankruptcy on which a subsequent adjudication is founded, the grantee of the bill of sale must prove that he had no notice of the act of bankruptcy, in order that the transaction may be protected against the trustee's title to the goods included in the bill of sale.—*Ex parte Cartwright, Re Joy*, 44 L.T. 883.
- (ix.) **C. A.—Composition—Contract to pay Debt in full.**—An agreement made by a compounding debtor, prior to the completion of the composition, to pay in full the debt of a creditor bound by the composition, is void.—*Ex parte Barrow, Re Andrews*, 45 L.T. 197.

- (i.) **C. A.—Elegit—Seizure and Sale—Act of Bankruptcy—Bankruptcy Act, 1869, s. 95 (3).**—When the sheriff, under a writ of *elegit*, causes goods of a judgment debtor to be delivered to the creditor by a reasonable price, this is a "seizure and sale," so as to bring the transaction within the protection of sec. 95, sub-sec. 3 of Bankruptcy Act. "Act of bankruptcy," in that sub-section, means an act of bankruptcy committed prior to the sheriff's seizure.—*Ex parte Vale, Re Bannister*, 45 L.T. 200; 29 W.R. 855.
- (ii.) **C. J. B.—Fraudulent Preference—Pressure.**—A. having obtained a loan from B., his brother-in-law, and B. having pressed for re-payment, A. sold his business and paid B. in full, and shortly afterwards filed a liquidation petition. He stated, on examination, that he would have paid B. in full without pressure: *Held*, under the circumstances, that the payment was a fraudulent preference.—*Ex parte Wheatley, Re Grimes*, 45 L.T. 80.
- (iii.) **C. A.—Lease—Disclaimer—Leave of Court—Bankruptcy Rules, 1871, r. 28.**—In giving leave to a trustee to disclaim leaseholds of the bankrupt, the Court may impose such conditions as it thinks fit.—*Ex parte Ladbury, Re Turner*, L.R. 17 Ch. D. 532; 45 L.T. 5.
- (iv.) **C. A.—Lease—Disclaimer—Leave of Court.**—In determining whether leave shall be given to a trustee to disclaim leaseholds, the Court should regard only the benefit of the persons interested in the administration of the bankrupt's estate.—*Ex parte East and West India Dock Co., Re Clarke*, L.R. 17 Ch. D. 759; 45 L.T. 6.
- (v.) **C. A.—Lease—Disclaimer—Sub-Tenant.**—Where a lessee, who has sublet becomes bankrupt, the Court may sanction a disclaimer by his trustee in bankruptcy; and such disclaimer will not affect the right of the lessor to distrain for the rent reserved in the original lease, or to re-enter for breach of the covenants contained therein. Principles of interpretation of statutes considered.—*Ex parte Walton, Re Levy*, L.R. 17 Ch. D. 746; 50 L.J. Ch. 657; 45 L.T. 1.
- (vi.) **C. J. B.—Lease—Disclaimer—Tenant's Fixtures.**—A lease contained a proviso that the tenant or his assigns might remove tenant's fixtures at any time within twelve months from expiration or sooner determination of the term. The tenant's trustee in bankruptcy sold the tenant's fixtures, and afterwards disclaimed the lease: *Held* that he had a right to do so.—*Ex parte Glegg, Re Latham*, 50 L.J. Ch. 711; 45 L.T. 31; 29 W.R. 898.
- (vii.) **C. A.—Order and Disposition—Hiring Furniture by Hotel-Keeper.**—The custom of hiring furniture for the purposes of hotels is so notorious that, where furniture is so hired, and the hotel-keeper becomes bankrupt, the furniture will not be regarded as being in the possession, order, or disposition of the bankrupt within the meaning of sec. 15 of Bankruptcy Act, 1869.—*Crane v. Salter*, 45 L.T. 62.
- (viii.) **C. A.—Petition—Description of Trade—Notice of Day of Hearing.**—A creditor's petition stated that the debtor was a licensed victualler, and committed an act of bankruptcy by absenting himself with intent to defeat or delay his creditors. The note on the sealed copy served, stated that the petition was to be heard on the next day, and that if the debtor intended to dispute the petition, he must file a notice and send a copy of the affidavit in support to petitioner three days before day of hearing. Objections on the ground that the debtor was not stated to be a trader, and that the note as to the time of hearing was misleading, were overruled.—*Ex parte Palmer, Re Palmer*, 45 L.T. 98.

- (i.) **C. A.**—*Presence of Debtor at Meeting—Bankruptcy Act, 1869, s. 126.*—The Court refused to register resolutions passed at a first meeting of creditors, when it appeared that the debtors were not present in the room where the meeting was held.—*Ex parte Best, Re Best and Marshall*, 45 L.T. 95.
- (ii.) **C. A.**—*Proof—Judgment Debt—Fraud.*—The Court of Bankruptcy will go behind a judgment or compromise, and refuse to admit a proof founded thereon, if it can see that the original claim was not a *bond fide* one.—*Ex parte Banner, Re Blythe*, L.R. 17 Ch. D. 480; 44 L.T. 908.
- (iii.) **C. A.**—*Registrar—Refusal to Register Resolutions—Bankruptcy Act, 1869, s. 126.*—A registrar is bound, even in the absence of any opposition, to refuse to register resolutions when he sees that they must necessarily have been passed in the interest of the debtor.—*Ex parte Williams, Re Williams*, 50 L.J. Ch. 741; 45 L.T. 96.
- (iv.) **Q. B. Div.**—*Trust Fund Mis-applied—Following Trust-Moneys.*—Defendants, brewers, employed F. as their malting agent, and the regular course of business was for F. to buy barley and convert it into malt, defendants providing the capital for the purchase of the barley, and paying F. a commission. F. fraudulently sent in to defendants fictitious accounts of barley bought, and used the money obtained from defendants for other purposes, buying barley and malt on credit to supply defendants. F. at length absconded, leaving on his premises barley and malt to a considerable value, but less than the amount misappropriated by him. Defendants seized the barley and malt: *Held* that they were entitled to retain it against F.'s trustee in bankruptcy.—*Harris v. Truman*, L.R. 7 Q.B.D. 340; 50 L.J. Q.B. 633.

Bill of Sale :—

- (v.) **C. J. B.**—*Consideration—41 & 42 Vict., c. 31, s. 8.*—A bill of sale was expressed to be made in consideration of £50 then paid to grantor. In fact £21 10s. only was paid to grantor, £25 to grantor's landlord for rent due, and £3 10s. was retained by grantee, on grantor's direction, for expenses of registration: *Held* that the consideration was truly set forth.—*Ex parte Nicholson, Re Spindler*, 44 L.T. 828.
- (vi.) **C. A.**—*Registration—Priority.*—Decision of Q.B. Div. (L.R. 6 Q.B.D. 660; 50 L.J. C.P. 322; 44 L.T. 312) to the effect that sec. 10 of Bills of Sale Act, 1878, as to priority, apply only where there has been a bankruptcy, reversed on the authority of *Conelly v. Steer* (50 L.J. Q.B. 327; 29 W.R. 529).—*Lyons v. Tucker*, 50 L.J. Q.B. 661.
- (vii.) **Ch. Div. V. C. H.**—*Substitution of Security—Discharge in Bankruptcy.*—The grantor of a bill of sale of effects then or thereafter to be upon certain premises, is not protected by a subsequent discharge in bankruptcy from the right of the grantee to enforce his security against effects brought upon the premises after the discharge.—*Collyer v. Isaacs*, 50 L.J. Ch. 707; 44 L.T. 372.

Charity :—

- (viii.) **C. A.**—*Action against Cathedral Chapter—Mandamus—Sanction of Charity Commissioners—16 & 17 Vict., c. 137, ss. 17, 62.*—An action was brought by the Attorney-General on the relation of the incumbents of parishes in M. against the dean and canons of M. and the Ecclesiastical Commissioners, alleging that certain payments made by the dean and canons out of a part of the capitular revenue, which was held on trusts for the benefit of the incumbents of M., were improper; and asking for a mandamus ordering defendants to render proper accounts. On demurrer: *Held*, affirming the decision of V.C.H. (50 L.J. Ch. 562;

44 L.T. 868), that the action required the previous sanction of the Charity Commissioners.—*Attorney-General v. Dean and Canons of Manchester*, 45 L.T. 184.

- (i.) **C. A.**—*Charity Commissioners—Scheme*.—When a scheme has been settled by the Charity Commissioners, the Court will not interfere unless they have exceeded their jurisdiction or have made some slip or serious error which calls for its intervention.—*Re The Campden Charities*, 50 L.J. Ch. 646; 45 L.T. 152.

Colonial Law:—

- (ii.) **P. C.**—*Canada—Rule to set aside Verdict*.—On a rule in the Court of Queen's Bench for Ontario, to set aside a verdict for plaintiff and enter non-suit or verdict for defendant, when the finding of the jury had been in favour of plaintiff on a material issue: *Held* that the Court had no power to direct a verdict to be entered for defendant in direct opposition to the finding of the jury.—*Connecticut Mutual Insurance Co. v. Moore*, L.R. 6 App. 644.
- (iii.) **P. C.**—*Natal—Suit against Public Officer*.—*Held* that Her Majesty's Deputy Commissary-General of Natal cannot be sued, either personally or in his official capacity, upon a contract entered into by him on behalf of the Commissariat Department.—*Palmer v. Hutchinson*, L.R. 6 App. 619; 45 L.T. 180.
- (iv.) **P. C.**—*New South Wales—Crown Lands—Sale by Auction*.—Lands which have reverted to the Crown under sec. 18 of the Crown Lands Alienation Act 1861, can only be disposed of by auction.—*Blackburn v. Flavell*, L.R. 6. App. 628; 45 L.T. 52.
- (v.) **P. C.**—*New South Wales—Right of Way—Dedication—Crown Lands*.—User may be relied on in New South Wales, in the same manner as in England, for the purpose of raising a presumption of dedication of a road over Crown lands.—*Turner v. Walsh*, L.R. 6 App. 636; 45 L.T. 50.

Company:—

- (vi.) **Ch. Div. F. J.**—*Winding-up—Contributory—Life Insurance—Policy-holder*.—The constitution of a life insurance society was such that participating policy-holders were liable as contributories after shareholders: *Held*, on the construction of the articles, that a policy-holder who had assigned his policy before the winding-up was not liable as a contributory.—*Ex parte Brown, Re Albion Life Assurance Society*, 50 L.J. Ch. 714.
- (vii.) **Ch. Div. V. C. B.**—*Winding-up—Contributory—Calls paid in Advance—Registration of Contract—30 & 31 Vict, c. 131, s. 25*.—Directors can sell at a discount, without a registered contract, shares which have been forfeited for non-payment of calls. They can also write off calls due from a shareholder who is solicitor to the company, against his bill of costs, or against payments made by him to creditors of the company on the directors' authority.—*Ramwell's Case, Re Exchange Banking Company*, 29 W.R. 882.
- (viii.) **Ch. Div. V. C. H.**—*Winding-up—Contributory—Shares taken in name of Wife*.—D. in 1860 took 200 shares in a company in the name of his wife M., and paid all calls on the shares. M. was ignorant of the whole matter. The company was wound-up in 1866, and D. having died shortly afterwards, M. was put on the list of contributories; but her separate estate was not sufficient to meet the calls: *Held* that, as the company had accepted M. as a shareholder, the estate of D. could not be made to contribute.—*Re London, Bombay and Mediterranean Bank*, 50 L.J. Ch. 557; 45 L.T. 166.

- (i.) **Ch. Div. F. J.**—*Winding-up—Examination of Witnesses by Contributory*—*Companies Act, 1862, s. 115.*—An order having been made in a winding-up, allowing contributories to attend the examination of witnesses by the official liquidator, and further examine them; a witness refused to be examined by a contributory: *Held* that he must attend at his own expense, and submit to be examined.—*Whitworth's Case, Re Silkstone, &c., Coal and Iron Company, 50 L.J. Ch. 752; 45 L.T. 173; 29 W.R. 866.*
- (ii.) **C. A.**—*Winding-up—Mining Company—Stannaries Court—Jurisdiction*—*Companies Act, 1862, s. 81.*—In order to give the Stannaries Court exclusive jurisdiction with regard to a mining company under sec. 81 of Companies Act 1862, it must be proved that the company is or has been actually engaged in working a mine within the jurisdiction of the Stannaries.—*Re Silver Valley Mines, 45 L.T. 104.*
- (iii.) **Ch. Div. F. J.**—*Winding-up—Mortgage—Leave to Distrain*—*Companies Act, 1862, ss. 87, 136, 163.*—An application in a winding-up under supervision, by mortgagees for leave to distrain under a power in their mortgage, for interest due before the winding-up, was refused.—*Ex parte Roberts, Re Brown, Bailey and Dixon, 50 L.J. Ch. 739.*
- (iv.) **Ch. Div. V. C. B.**—*Winding-up—Mortgagee Shareholder—Injunction against Sale.*—A shareholder who is mortgagee of the property of a company, and has presented a winding-up petition, will be restrained from exercising his power of sale under the mortgage till the hearing of the petition.—*Ex parte Fell, Re Cambrian Mining Company, 45 L.T. 208; 29 W.R. 881.*
- (v.) **Ch. Div. V. C. H.**—*Winding-up—Proof—Breach of Contract to allot paid-up Shares.*—A., a holder of debentures in a limited company, exchanged them for shares issued as fully paid-up; but no contract in writing was filed as required by sec. 25 of Companies Act, 1867; and on the winding-up of the company, A. was made a contributory in respect of these shares: *Held* that A. was entitled to prove in the winding-up for damages in respect of the breach of contract by the company to issue paid-up shares.—*Appleyard's Case, Re Great Australian Gold Mining Co., 50 L.J. Ch. 554.*
- (vi.) **Ch. Div. F. J.**—*Winding-up—Proof—Costs.*—A creditor claimed to prove in a winding-up for sums parts of which were allowed. The liquidator made a claim against the creditor which was disallowed: *Held* that costs of the creditor so far as they resulted from his own claim were to be added to his debt, and so far as resulted from the liquidator's claim, were to be paid in full out of the company's assets.—*Ex parte Lombard Building Society, Re Lombard Benefit Bank, 50 L.J. Ch. 749.*

Crimes and Offences:—

- (vii.) **Q. B. Div.**—*Education—Attendance Order—Residence apart from Parent*—33 & 34 Vict., c. 75, s. 3.—Respondent, a widow, was summoned for neglecting to comply with an order to send her child to a certified school, and she pleaded that she was too poor to maintain the child, and had sent her to live with an aunt: *Held* that she was liable to be convicted.—*London School Board v. Jackson, 50 L.J. M.C. 134.*
- (viii.) **C. C. R.**—*Larceny by Bailee.*—Prosecutor advanced money to prisoner on deposit of a title deed to property, and on a legal mortgage of the same property. Prisoner obtained from prosecutor the title deed on the representation that he had found a person who would take a transfer of the mortgage; and he then obtained £140 from another person on deposit of the deed, and appropriated the money to his own use. The

judge directed the jury that the prisoner was a bailee of the deed : Held that the direction was right, and that prisoner was properly convicted of larceny as a bailee.—*Regina v. Tonkinson*, 44 L.T. 821.

- (i.) **Q. B. Div.**—*Wild Birds Protection Act, 1880, s. 3*—*Foreign Birds*.—In order that a person may be exempt from the penalty for exposing for sale wild birds within the prohibited time as imposed by sec. 3 of Wild Birds Protection Act, 1880, on the ground that they were bought or received from some person residing out of the United Kingdom, he must have so bought or received them directly.—*Taylor v. Hughes*, 50 L.J. M.C. 182.

Debtor and Creditor :—

- (ii.) **C. A.**—*Army Agent—Value of Commission—Set-off*.—Army agents are entitled to set-off against moneys paid to them by the Army Purchase Commissioners in respect of an officer's commission on his retirement, any sums due to them from the officer previous to such retirement being gazetted ; and this right of set-off is good against a previous assignee for value of such moneys, though such assignee give notice of his assignment to the agents immediately after the retirement is gazetted.—*Roxburghe v. Cox*, L.R. 17 Ch. D. 520.

Easement :—

- (iii.) **H. L.**—*Lateral Support to Buildings—Prescription—2 & 3 Will. IV., c. 71, s. 2*.—A right of lateral support to a building by its adjacent soil is an easement within the Prescription Act, and may be acquired by twenty years' uninterrupted enjoyment.—*Commissioners of Public Works v. Angus*, *Dalton v. Angus*, 44 L.T. 844.
- (iv.) **Ch. Div. V. C. B.**—*Right of Way—Dedication by Lessee—88 & 39 Vict., c. 55, ss. 4, 150*.—The lessee of land laid out a proposed road across it in 1835, and built along the side of the road. In 1870 the lessee abandoned her intention of making the road, and in 1874 demised the land : Held that there had been no dedication of a public right of way along the abandoned road, so as to entitle the urban authority under the Public Health Act, 1875, to require the road to be paved.—*Hall v. Bootle Corporation*, 44 L.T. 873 ; 29 W.R. 862.
- (v.) **Ch. Div. F. J.**—*Right of Way—General Words—Partition Deed*.—General words in a deed of partition carry a right of way over an existing path in actual use over one property to the other.—*Barkshire v. Grubb*, 50 L.J. Ch. 731 ; 29 W.R. 929.

Election :—

- (vi.) **Q. B. Div.**—*Municipal Corporation—Town Councillor—Nomination Paper—88 & 39 Vict., c. 40, s. 1 (2)*.—After the nomination paper of a candidate at an election of ward councillor in a borough had been duly signed by proposer, seconder, and eight burgesses, and delivered to the town clerk, the paper was altered in the absence of the seconder and eight burgesses, by substituting a fresh person as proposer : Held that the nomination was invalid.—*Harmon v. Park*, L.R. 7 Q.B.D. 369 ; 45 L.T. 174.
- (vii.) **Q. B. Div.**—*Parliament—Election Commissioners—Refusal of Certificate to Witness—26 & 27 Vict., c. 29, s. 7*.—Where Election Commissioners refuse to give a certificate of indemnity to a witness on the ground that his answers were unsatisfactory, the Court will not grant a mandamus to compel them to do so, if *prima facie* they appear to have acted rightly in refusing the certificate.—*Regina v. Holl*, 45 L.T. 69.

- (i.) **Q. B. Div.**—*Parliament—Election Petition—Costs of Witnesses*—31 & 32 Vict., c. 125, ss. 34, 41.—In taxing under the Parliamentary Elections Act, 1868, s. 41, costs between parties to an election petition, the master disallowed part of what had been allowed by the Registrar's certificate, under sec. 34, for reasonable expenses of witnesses: *Held* that the Master had power to do so.—*McLaren v. Home*, L.R. 7 Q.B.D. 477; 50 L.J. Q.B. 658.

Evidence:—

- (ii.) **C. A.**—*Solicitor attesting Witness*.—A solicitor employed to obtain the execution of a deed, and who is an attesting witness thereto, is not precluded from giving evidence as to what passed at the time of execution, by which the deed may be proved invalid.—*Crawcour v. Salter*, 45 L.T. 62.

Friendly Society:—

- (iii.) **Ch. Div. F. J.**—*Loan on Personal Security—Illegal Contract*—38 & 39 Vict., c. 60, s. 16 (1).—A loan made by trustees of a Friendly Society, registered under the Friendly Societies Act, 1875, to a person not a member, on his personal security, is made in violation of the Act, and an action cannot be maintained upon it.—*Coltman v. Coltman*, 50 L.J. Ch. 721; 29 W.R. 923.

Highway:—

- (iv.) **Q. B. Div.**—*Locomotive—Tricycle*—41 & 42 Vict., c. 77, s. 38.—*Held* that a tricycle capable of being propelled by steam was a locomotive within sec. 38 of Highways and Locomotives (Amendment) Act, 1878.—*Parkyns v. Priest*, L.R. 7 Q.B.D. 313; 50 L.J. Q.B. 648.

Husband and Wife:—

- (v.) **Ch. Div. K. J.**—*Agreement for Separation Deed—Specific Performance—Usual Covenants*.—An agreement between husband and wife, come to as a compromise on a divorce petition, for the execution of a separation deed with usual covenants, decreed to be specifically performed: *Held* also that usual covenants did not include a *dum casta* clause, but imported that a trustee should be found by the wife; and that, assuming that the intention of the agreement was that the wife was to have the custody of the children, the effect of 36 Vict., c. 12, was not to make this an obstacle to granting specific performance.—*Hart v. Hart*, 50 L.J. Ch. 697; 45 L.T. 13.

Landlord and Tenant:—

- (vi.) **Ch. Div. F. J.**—*Public House—Covenant to Purchase Beer from Lessor—License to Enter by Force*.—The lessee of a public house covenanted with the lessors, who were brewers, to purchase beer from them only: *Held* that the purchasing beer from them through an undisclosed agent was not a breach of the covenant: *Held* also that a license by tenant to landlord to enter and evict by force is void by virtue of 5 Rich. II., c. 8. The fact that no resistance is made to actual entry does not remove the illegality of entry with show of force and subsequent forcible eviction.—*Edridge v. Hawker & Co.*, 50 L.J. Ch. 577; *Edwick v. Hawkes & Co.*, 45 L.T. 168; 29 W.R. 913.

Lands Clauses Act:—

- (vii.) **Q. B. Div.**—*Compensation—Trial in High Court—Warrant to Sheriff—Land Clauses Act, 1845, s. 68; 31 & 32 Vict., c. 119, s. 41*.—A judge has no jurisdiction to make an order under sec. 41 of Regulation of Railways Act, 1868, where the 21 days limited by sec. 68 of Land Clauses Act,

1845, for the issuing of a warrant to the sheriff has expired before the summons taken out by the company under the first mentioned section is made returnable, nor when a warrant has already been issued by the company to the sheriff, in respect of the same matter, but the verdict given on the trial has been set aside.—*Tanner v. Swindon &c., Rail Co.*, 45 L.T. 209.

- (i.) **C. A.**—*Compulsory Purchase—Right to Mines.*—A railway company compulsorily purchasing land is not entitled to a conveyance of the mines and minerals unless they have been expressly purchased.—*Re Metropolitan District Rail. Co. and Cotton's Trustees*, 45 L.T. 103.
- (ii.) **Ch. Div. F. J.**—*Interim Investment—Cash under Control of Court.*—23 & 24 Vict., c. 38, s. 10.—The powers of investment conferred by 23 & 24 Vict., c. 38, s. 10, do not apply to money paid into Court under the Lands Clauses Acts.—*Ex parte Vicar of St. Mary, Wigton*, 45 L.T. 184; 29 W.R. 883.
- (iii.) **C. A.**—*Sale by Trustee—Appointment of Trustee as Surveyor.*—A trustee holding property upon trust for a married woman absolutely for her separate use, is a person enabled to sell and convey under the Lands Clauses Act, 1845. Trustees selling under sec. 7 of the Act appointed one of themselves to act as surveyor on their behalf to make the valuation required by sec. 9: Held that this was such an irregularity as to invalidate the proceedings.—*Peters v. Lewes and East Grinstead Rail. Co.*, 29 W.R. 874.

Licensed House:—

- (iv.) **Q. B. Div.**—*Conviction of Licensed Person—Application by Owner to Carry on Business—Discretion of Justices.*—37 & 38 Vict., c. 49, s. 15.—Under sec. 15 of Licensing Act, 1874, application was made at special licensing sessions by the owner of a beer house licensed from a date anterior to 1869, the tenant of which had been convicted of felony, for the grant of a license in respect of the premises, and the Justices refused on the ground that the house was of a disorderly character: Held that they had a discretion so to refuse.—*Regina v. Hertfordshire Justices*, 60 L.J. M.C. 121.

Limitations, Statutes of:—

- (v.) **C. A.**—*Action for Penalty—Counterfeit Hall Marks—Party Grieved.*—7 & 8 Vict., c. 22; 3 & 4 Will. IV., c. 42, s. 3.—In an action for penalties brought by the Goldsmiths' Company under sec. 3 of 7 & 8 Vict., c. 22, against defendant for having sold silver wares having a counterfeit mark, defendant pleaded, 3 & 4 Will. IV., c. 42, s. 3, that plaintiff was a party grieved within the Act, and could not sue after two years: Held a bad plea, and that sec. 5 of 31 Eliz., c. 5, does not apply to such an action.—*Robinson v. Curry*, L.R. 7 Q.B.D. 465; 50 L.J. Q.B. 561.
- (vi.) **Q. B. Div.**—*Promissory Note.—Days of Grace expiring on Sunday.*—Ord. 57, r. 3.—Plaintiff sued on a promissory note at three months, dated 11th March, 1874, and which would therefore, have been due on the 14th June, 1874, if that day had not been Sunday. The writ was dated 14th June, 1880: Held that the action was barred by the Statute of Limitations.—*Morris v. Richards*, 45 L.T. 210.

Lunacy:—

- (vii.) **C. A.**—*Appointment of Committee out of Jurisdiction—Master's Report.*—On a proposal to appoint as committee a person out of the jurisdiction, the Master in Lunacy reported that as the proposed committee was out of the jurisdiction he could not approve of him. The Court declined to

appoint him until the Master had certified that he was a person whom he should have approved, if resident within the jurisdiction.—*Re Bruns* L.R. 17 Ch. D. 775.

- (i.) **C. A.**—*Petition—Examination of Lunatic—Medical Witnesses—Place of Holding Inquiry.*—Where there was a dispute between a petitioner in lunacy and the alleged lunatic, as to when and where she should be examined by medical men, the Court ordered that two of the Lord Chancellor's visitors should examine the alleged lunatic, and report as to her state of mind. It is not an invariable practice to order an inquiry with a jury as to the state of mind of an alleged lunatic, to be held in the neighbourhood of the latter's residence.—*Re X. Y. Z.*, 45 L.T. 97.
- (ii.) **C. A.**—*Transfer of Stock—Debenture*—16 & 17 Vict., c. 70, s. 141.—A debenture bond of a limited company transferable by deed registered on presentation in the company's book of mortgages, ordered to be transferred under sec. 141 of Lunacy Regulation Act, 1853.—*Re Mitchell*, 17 Ch. D. 515; 45 L.T. 60.

Metropolitan Management:—

- (iii.) **Q. B. Div.**—*Board of Works—Letting off Water from Sewer—Damage—Act of God*—18 & 19 Vict., c. 120, ss. 135, 136.—The Metropolitan Board of Works under the powers conferred by secs. 135, 136 of Metropolitan Local Management Act, 1856, constructed a sewer having an out-fall with water-gates which had to be opened when the water within was of a certain height. After an exceptionally heavy rain-fall, the gates were opened and the rush of water therefrom caused damage to plaintiff's wharf, which was near the out-fall: *Held* that though the injury was not occasioned by the Act of God, yet the Board were not liable, as what they did was authorised by Act of Parliament and done in discharge of a public duty.—*Dixon v. Metropolitan Board of Works*, L.R. 7 Q.B.D. 418.
- (iv.) **Q. B. Div.**—*Fire Brigade—Power to take Possession of Premises—Liability*—28 & 29 Vict., c. 90, ss. 12, 29.—It is not an imperative duty of the Metropolitan Fire Brigade under 28 & 29 Vict., c. 20, to take possession of property on premises where there is a fire, but they have power to do so, and if they do the Metropolitan Board of Works will be liable for injury arising to the property through negligence of the Brigade Officers.—*Joyce v. Metropolitan Board of Works*, 44 L.T. 811.

Mines:—

- (v.) **C. A.**—*Forest of Dean—Mortgagor and Mortgagee—Statutory Duty*—1 & 2 Vict., c. 43, s. 29.—Plaintiffs brought an action for damages against mortgagors in possession and mortgagees of adjoining gales in the Forest of Dean, for injury sustained through the stopping of engines in defendant's gales contrary to the rules made under 1 & 2 Vict., c. 43: *Held* that the specific remedy given by sec. 29 of that Act did not exclude plaintiff's right to recover damages, and that the mortgagees were not liable.—*Brain v. Thomas*, 50 L.J. Q.B. 662.

Mortgage:—

- (vi.) **Ch. Div. F. J.**—*Foreclosure—Payment of Rent—Statutes of Limitations*—7 Will. IV. and 1 Vict., c. 28; 37 & 38 Vict., c. 57, ss. 1, 8.—A foreclosure action is not within sec. 8 of 37 & 38 Vict., c. 57, but is within sec. 1. Payment of rent by a tenant of a mortgagor to mortgagees on his demand, without mortgagor's authority, is a payment under 7 Will. IV. and 1 Vict., c. 28, so as to keep alive mortgagee's right to foreclose.—*Harlock v. Ashberry*, 50 L.J. Ch. 745; 29 W.R. 887.

Municipal Law :—

- (i.) **Q. B. Div.**—*Borough without Commission of Peace—Jurisdiction of Mayor*—5 & 6 Will. IV., c. 76.—The mayor of a borough in sch. B. of Municipal Corporations Act, 1835, which has no separate commission of the peace, has jurisdiction under secs. 57, 101, to act as a justice of the peace for the borough.—*Wilson v. Strugnell*, 45 L.T. 219.
- (ii.) **Q. B. Div.**—*Riot—Damage to Houses—Action against Hundred*—7 & 8 Geo. IV., c. 81, s. 2.—A house damaged by rioters is not "feloniously demolished wholly or in part" within sec. 2 of 7 & 8 Geo. IV., c. 81, unless the rioters, when attacking it, had an intention wholly to destroy it.—*Drake v. Footitt*, L.R. 7 Q.B.D. 201 ; 45 L.T. 42.

Partnership :—

- (iii.) **Ch. Div. K. J.**—*Dissolution—Return of Premium*.—Plaintiff and defendant entered into partnership as solicitors for twenty years, the partnership to be determined at the option of either partner on three months' notice, plaintiff to have the option of increasing his share on payment of £600 to defendant. Plaintiff paid £600 to defendant, and afterwards defendant dissolved the partnership by notice: Held that plaintiff was entitled to the return of a proportionate part of the £600.—*Daw v. Rooke*, *Rooke v. Nisbet*, 50 L.J. Ch. 588 ; 29 W.R. 842.
- (iv.) **Ch. Div. K. J.**—*Dissolution—Sale of Business—Sharing Profit and Loss*.—An agreement to share profit and loss of a business entitles each party, as against the other, to the general rights of a partner including an interest in the goodwill. Where the business premises of a partnership belonged to one partner, the Court, in an action for dissolution, directed the sale of the business to be conducted by independent solicitors, with liberty to either party to bid.—*Pawsey v. Armstrong*, 50 L.J. Ch. 683.
- (v.) **Ch. Div. F. J.**—*Sale of Goodwill—Trade Circular—Solicitation—Injunction*.—M. and C. being in partnership as wine merchants under articles by which M. was to acquire the business on the termination of the partnership, and the partnership being about to expire, C. joined another firm of wine merchants. The Court granted an injunction restraining C. from issuing a circular, which was held to imply that the new firm were successors in business to M. and C.—*Mogford v. Courtenay*, 29 W.R. 864.

Patent :—

- (vi.) **Q. B. Div.**—*Novelty*.—Held that an invention which consisted of the combination of two prior patents was not of sufficient novelty to constitute the subject of a valid patent.—*Saxby v. Gloucester Waggon Co.*, L.R. 7 Q.B.D. 305 ; 50 L.J. Q.B. 577.

Poor Law :—

- (vii.) **Q. B. Div.**—*Bastardy—Maintenance Order*—35 & 36 Vict., c. 65, s. 5.—Justices have a discretion, in making an affiliation order, to direct the payment of maintenance by the father for a shorter period than the attainment of thirteen years by the child.—*Pearson v. Heys*, L.R. 7 Q.B.D. 260 ; 50 L.J. M.C. 124.
- (viii.) **Q. B. Div.**—*Derivative Settlement—Illegitimate Child*—39 & 40 Vict., c. 61, s. 35.—Illegitimate children under sixteen do not take the settlement of their mother, when such settlement has been derived from her marriage, though the birth of the child and the marriage of the mother were before 39 & 40 Vict., c. 61.—*Regina v. Portsea Guardians*, L.R. 7 Q.B.D. 884.

- (i.) **Q. B. Div.—Rate—Distress Warrant—Power to Delay Execution.**—Justices issuing a distress warrant for recovery of poor rates have no power to order that there shall be any delay in the execution of the warrant.—*Regina v. Handsley*, L.R. 7 Q.B.D. 398.

Practice :—

- (ii.) **C. A.—Appeal—Order of Justices to Abate Nuisance—38 & 39 Vict., c. 55, s. 96—Judicature Act, 1873, s. 47.**—Justices having made an order under sec. 96 of Public Health Act, 1875, requiring an owner to abate a nuisance, the Q.B. Div. granted a *certiorari* to bring up and quash the order. *Held* that no appeal would lie from the order of the Q.B. Div., because it was made in a criminal cause or matter within sec. 47 of Judicature Act, 1873.—*Ex parte Whitchurch*, 50 L.J. M.C. 99; 29 W.R. 922.
- (iii.) **C. A.—Costs—Counter-claim.**—At the trial of a claim and counter-claim the judge dismissed the claim without costs, and the counter-claim with costs, but ordered that if the costs of the counter-claim should not amount to half the whole costs of the action, defendant should pay the difference. *Held* that the order was irregular.—*Willmott v. Barber*, L.R. 17 Ch. D. 772.
- (iv.) **C. A.—Costs—Divorce Suit—Wife's Costs.**—In a divorce suit, the costs of the wife payable by the husband, are not limited to the amount paid into Court, or secured by the husband for that purpose.—*Robertson v. Robertson*, L.R. 6 P.D. 119; 29 W.R. 880.
- (v.) **C. A.—Costs—Withdrawal of Defence—Ord. 23, r. 1.**—By an order in an action, one of two defendants was allowed to withdraw his defence on the terms of his paying to plaintiffs their costs so far as occasioned by that defence down to date of application for leave to withdraw: *Held* that this relieved the withdrawing defendant from the general costs of the action.—*Real & Personal Advance Co. v. McCarthy*, 45 L.T. 116.
- (vi.) **Q. B. Div.—New Trial—Verdict against Evidence—Damages less than £20.**—The Court will not in general grant a new trial on the ground that the verdict is against the weight of evidence, when the damages do not exceed £20; unless the action is to try a right, or a question of personal character is involved.—*Joyce v. Metropolitan Board of Works*, 44 L.T. 811.
- (vii.) **Ch. Div. F. J.—Pleading—Specific Performance—Allegation of Agreement—Statute of Frauds—Demurrer.**—In an action for specific performance of an agreement, where the statement of claim is silent as to whether the agreement was in writing or not, a defence founded on the Statute of Frauds cannot be raised by demurrer.—*Fletcher v. Fletcher*, 50 L.J. Ch. 735; 29 W.R. 884.
- (viii.) **Ch. Div. M. R.—Reference to Arbitration—Action in Chancery Division—Compelling Attendance of Witness—3 & 4 Will. IV., c. 42, s. 40—Judicature Act, 1873, ss. 3, 16.**—An order may now be made on summons in the Chancery Div., under 3 & 4 Will. IV., c. 42, s. 40, requiring the attendance of a witness before an arbitrator appointed in that division; and the order will be directed to be served as an ordinary *subpœna*.—*Clarbrough v. Toothill*, L.R. 17 Ch. D. 787; 50 L.J. Ch. 743.
- (ix.) **Ch. Div. F. J.—Sequestration—Probate and Divorce Division—Administration—Jurisdiction.**—Order made, on summons in an administration action, directing payment to sequestrators appointed by the P.D. and A. Div., of income of a beneficiary of the trust administered.—*Slade v. Hulme*, 50 L.J. Ch. 729.

- (i.) **Q. B. Div.**—*Sheriff—Attachment for not returning writ of fi. fa.*—Ord. 44, r. 2.—An application on motion under Ord. 44, r. 2, to attach the Sheriff for not returning a writ of fi. fa. should be for an order nisi.—*Fowler v. Ashford*, 45 L.T. 46.

Principal and Agent:—

- (ii.) **H. L.**—*Liability for damage caused by Contractor.*—Where a contractor has been employed to do work which may be dangerous to a neighbouring property, and damage results, both contractor and employer are liable, apart from negligence.—*Commissioners of Public Works v. Angus*, *Dalton v. Angus*, 44 L.T. 844.

Principal and Surety:—

- (iii.) **C. A.**—*Judgment against Principal—Liability of Surety.*—A judgment or award against a principal debtor is not, in the absence of special agreement, binding on the surety, nor is it evidence against him in an action by the creditor.—*Ex parte Young*, *Re Kitchen*, L.R. 17 Ch. D. 668; 45 L.T. 90.

Probate:—

- (iv.) **P. D. A. Div.**—*Appointment under Power—Subsequent Will—Revocation.*—Testatrix duly executed a power of appointment under her father's will in the form of a testamentary appointment, and subsequently made a will exercising fully all powers of appointment possessed by her, but not referring either to the power under her father's will or to the testamentary appointment: Held that the appointment was revoked by the will.—*In the goods of Tenney*, 45 L.T. 78.
- (v.) **P. D. A. Div.**—*Renunciation of Sole Executor—Administration with Will Annexed.*—A husband who was sole executor and universal legatee under his wife's will having renounced probate, and being afterwards desirous of proving the will, administration with will annexed was granted to him.—*In the goods of Blisset*, 44 L.T. 816.

Public Health:—

- (vi.) **Ch. Div. M. R.**—*Private Improvement Expenses—Charge on Premises*—38 & 39 Vict., c. 55, s. 257.—The charge created by sec. 257 of Public Health Act, 1875, for expenses incurred by a local authority, is a charge upon the "premises" as defined by sec. 4, and is therefore a charge on the respective interests of every owner for the time being in proportion to the value of his interest.—*Birmingham Corporation v. Baker*, L.R. 17 Ch. D. 782.

Railway:—

- (vii.) **Ch. Div. M. R.**—*Abandonment—No Assets—Parliamentary Deposit*—32 & 33 Vict., c. 114, s. 4.—A railway company had never purchased any land or commenced the railway, and the time for completing had expired. They had no uncalled capital, and by the provisions of their Act, the parliamentary deposit was either to be forfeited to the Crown, or if the company should be insolvent and ordered to be wound up, or a receiver appointed, should, in the discretion of the Court, be applied as assets for the benefit of creditors. The Board of Trade had refused to grant a warrant of abandonment, and a judgment creditor applied for a receiver to be appointed: Held that the Court had no jurisdiction to do so.—*Re Birmingham and Litchfield Railway Co.*, 50 L.J. Ch. 594; 45 L.T. 164; 29 W.R. 908.
- (viii.) **Ch. Div. V. C. H.**—*Abandonment of Branch Undertaking—Parliamentary Deposit.*—A railway company in 1878 obtained an Act authoris-

ing them to construct a branch line, the parliamentary deposit being paid by B. In 1880 an Act was obtained for the abandonment of the undertaking, providing that subject to rights to compensation and to the protection of the company's creditors the Court might order the deposit money to be repaid to the persons named in the parliamentary warrant. There were no creditors' claims in respect of the branch line, but the costs of obtaining an Act relating thereto were owing to B. who had paid them, and the general creditors of the company had large claims. On B.'s application for repayment to him of the deposit: *Held* that it had become part of the general assets of the company, and must be applied for the benefit of the general creditors.—*Re Manchester and Milford Railway Co.*, 45 L.T. 129.

- (i.) **Q. B. Div.**—*Passenger Duty—Cheap Trains—Exemption*—7 & 8 Vict., c. 85, ss. 6, 9.—In order that a train may be a cheap train within secs. 6, 9 of 7 & 8 Vict., c. 85, no third-class passenger carried by the train must be charged more than the parliamentary fare.—*Attorney-General v. Metropolitan Rail. Co.*, 50 L.J. Q.B. 573.
- (ii.) **C. A.**—*Railway Commissioners—Jurisdiction—Fares in Excess of Limit*—17 & 18 Vict., c. 31, s. 2.—The Railway Commissioners have no jurisdiction to entertain a complaint against a company of having demanded fares exceeding the limit fixed by statute.—*Brown v. Great Western Rail. Co.*, 45 L.T. 206.
- (iii.) **Q. B. Div.**—*Railway Commissioners—Revision of Working Agreement—Regulation of Railways Act, 1873, s. 10.*—In 1858 two railway companies entered into a working agreement under the powers of a special Act which provided that the agreement should not be valid until it had been approved by the Board of Trade, and the Board were empowered once in ten years to revise the agreement, in the interests of the public only: *Held* that the Railway Commissioners had power, by virtue of sec. 10 of 36 & 37 Vict., c. 48, to revise the agreement.—*Huddersfield Corporation v. Great Northern Rail. Co.*, 50 L.J. Q.B. 587.
- (iv.) **C. A.**—*Rent for Easement over Other Company's Line—Debenture-Holders—Receiver.*—The G. Railway Company agreed to grant to the E. Company an easement to run trains over a part of their lines on payment of a certain rent. The G. company recovered judgment for arrears of rent, and afterwards the debenture-holders of the E. company had a receiver appointed on their behalf: *Held* that the receiver was bound to pay the rent due to the G. company before making any payment to the debenture-holders, and that the G. company were entitled to judgment for possession until the arrears of rent were paid.—*Great Eastern Rail. Co. v. East London Rail. Co.*, 44 L.T. 903.

Revenue:—

- (v.) **Q. B. Div.**—*Inhabited House Duty*—41 Vict., c. 15, s. 18.—The provisions of sec. 13, sub-sec. 1, of 41 Vict., c. 15, only apply in cases where the house is divided into tenements structurally severed from each other.—*Chapman v. Royal Bank of Scotland*, L.R. 7 Q.B.D. 186; 45 L.T. 205.
- (vi.) **Ex. Div.**—*Land Tax—Refusal to Pay—Distress*—38 Geo. III., c. 5.—Where there has been no appeal from an assessment of the land tax, and, on a ratepayer refusing to pay, the collector, acting under a warrant signed by land tax commissioners, has seized and sold goods on such ratepayer's premises, no action will lie for an illegal distress.—*Simpkin v. Robinson*, 45 L.T. 221.
- (vii.) **Q. B. Div.**—*Succession Duty—Trust for Settlor for Term of Years*—16 & 17 Vict., c. 51.—Personalty was settled subsequently to 1863 in

trust for settlor for four years if he should so long live, and at the end of the term or on his death upon trust for his nieces absolutely. The settlor died eighteen months after the settlement. The Court was equally divided as to whether succession duty was payable on the whole property, or only on the income of the property for the unexpired part of the term of four years.—*Attorney-General v. Noyes*, 44 L.T. 801.

Scotland, Law of:—

- (i.) **H. L.**—*Contract to Purchase—Bankruptcy*—19 & 20 Vict., c. 60, s. 1.—Where there is an absolute *bond fide* contract of sale of an article which is not delivered before bankruptcy of seller, the right of the buyer to have delivery cannot be defeated by proof that the character of buyer had been conferred on him merely for the purpose of his having security for money intended to be advanced by him.—*M' Bain v. Wallace & Co.*, L.R. 6 App. 588.
- (ii.) **H. L.**—*Feu Charter—Restrictive Conditions—Right to Enforce—Suing with Consent*.—The fact that several feuars of neighbouring plots of building land hold from a common superior, does not entitle one of them to claim the benefit of restrictions contained in the feu contract of another, unless some mutuality and community of rights and obligations is otherwise established between them. Persons having no title to raise and insist on an action cannot have their right to sue validated by the consent and concurrence of the party having such right.—*Hislop v. Leckie*, L.R. 6 App. 560.
- (iii.) **H. L.**—*Marriage—Evidence of*.—B. married C. *in facie ecclesiae* in 1851, and died in 1872. In an attempt by A. to set up a previous irregular Scotch marriage, a witness gave evidence that B. told him after 1851 that A. was his wife and not C.: *Held* that such evidence was not admissible: *Held* also that statements preferred by D., the plaintiff in an action against B., as alleged husband of A., for A.'s board and lodging, signed by deceased persons, were not admissible.—*The Dysart Peerage Case*, L.R. 6 App. 489.

Settled Estates Act:—

- (iv.) **Ch. Div. F. J.**—*Drainage of Agricultural Land*—8 & 9 Vict., c. 56.—The Settled Estates Act, 1877, does not empower the Court to direct the carrying out of schemes of drainage for agricultural purposes.—*Dickson Poynder v. Cook*, 50 L.J. Ch. 753.
- (v.) **Ch. Div. F. J.**—*Sale*.—A sale out of Court will not be allowed under the S. E. Act. Persons entitled to a part only of the rents and profits may petition.—*Re Dryden's Settled Estates*, 50 L.J. Ch. 752; 29 W.R. 884.

Settlement:—

- (vi.) **Ch. Div. V. C. H.**—*Breach of Trust—Employment of Funds in Trade—Profits*.—Funds subject to the trusts of a settlement were employed in a trade unauthorized by the terms of the trust; and large profits were made therefrom: *Held* that the tenant for life was entitled only to receive four per cent. on the original capital of the fund, and that the rest of the profits must be regarded as capital subject to the trusts of the settlement.—*Hill v. Hill*, 50 L.J. Ch. 551; 45 L.T. 126.
- (vii.) **C. J. B.**—*Consideration—Bankruptcy*—13 Eliz., c. 5.—By a deed reciting that A. had contracted to buy of his son B. a certain reversionary interest of the latter for £2,500 in cash and an annuity of £300 for the limited period therein mentioned, and that A. had agreed to settle the reversion in manner thereafter expressed, an annuity of

£300 and the reversionary interests were settled by A. upon B. until he should become bankrupt or attempt to alienate the same, with trusts over in favour of B.'s wife and children. B. became bankrupt. *Held* that the settlement was not void under 13 Eliz., c. 5.—*Ex parte Eyre, Re Eyre*, 44 L.T. 922.

- (i.) **Ch. Div. K. J.**—*Post-Nuptial Settlement—Action to Set Aside—Parties.*—Plaintiff executed a post-nuptial settlement of nearly all his property, with a view to protecting it, in favour of his wife and children. The deed contained no power of revocation. In an action by him to set it aside on the ground of undue influence and mistake: *Held* that the wife must be made a defendant, and that the burden of proof of a sufficient ground for setting aside the deed lay on plaintiff.—*Henry v. Armstrong*, 44 L.T. 918.

Ship:—

- (ii.) **P. D. A. Div.**—*Collision—Damages—Practice.*—It is not an inflexible rule that all questions of damage in collision actions should be referred to the Registrar and Merchants.—*The Maid of Kent*, 50 L.J. P.D.A. 71; 29 W.R. 697.
- (iii.) **H. L.**—*Collision—Fog.*—When at night a mast-head light is seen but no side-lights, it is an indication to an approaching vessel that the light is that of a steamer whose side-lights are obscured by fog, and the vessel should make the signals prescribed by Art. 10 of Regulations for Preventing Collisions at Sea.—*The Milanese*, 45 L.T. 151.
- (iv.) **P. D. A. Div.**—*Collision—Limitation of Liability—Charges for Raising Sunken Ships*—40 & 41 Vict., c. 16, s. 4.—When the Thames Conservancy raises a ship and cargo sunk by collision, under the authority of sec. 4 of Removals of Wreck Act, 1877, the shipowner is not entitled to recover from the cargo-owner any proportion of the cost incurred in raising the cargo, even if he has limited his liability.—*The Ettrick*, 50 L.J. P.D.A. 65; *Prehn v. Bailey*, 44 L.T. 817.
- (v.) **Q. B. Div.**—*Engagement of Seamen—Owner*—17 & 18 Vict., c. 104, s. 147, sub-sec. 1.—The word "owner" in sec. 147 of Merchant Shipping Act, 1862, means any person who has a real interest in the ship.—*Hughes v. Sutherland*, L.R. 7 Q.B.D. 160; 50 L.J. Q.B. 567; 29 W.R. 867.
- (vi.) **Q. B. Div.**—*Insurance—Partial Loss—Estimation of.*—An insured ship having been injured by running aground, the owners determined not to repair her, but sold her and claimed for a partial loss: *Held* that the proper measure of the assured's loss, was the depreciation in the value of the ship caused by the injury, and not what it would have cost to repair her.—*Pitman v. Universal Marine Insurance Co.*, 45 L.T. 46.
- (vii.) **C. A.**—*Insurance—Re-Insurance—Voyage ended when Policy effected.*—Defendant underwrote a policy of insurance on a cargo lost or not lost for a certain voyage, and believing the vessel to be overdue, effected a policy of re-insurance with plaintiff on same cargo and risk. At the time of his doing so the vessel and cargo had arrived safe at port of destination: *Held* that plaintiff was entitled to the premium on the re-insurance.—*Bradford v. Symondson*, L.R. 7 Q.B.D. 466; 50 L.J., Q.B. 582.
- (viii.) **C. A.**—*Rules for Navigation of Thames.*—A steamer navigating the Thames against the tide is bound, in obedience to rule 23 of Thames Conservancy Rules, 1880, on approaching any of the points therein named, to wait until vessels approaching with the tide have passed her. Whether vessels are also bound to pass port-side to port-side

depends on whether the vessel navigating against the tide is close to the shore when waiting, or so far out as to allow the other vessels to pass port-side to port-side.—*The Lidra*, 45 L.T. 161.

- (i.) **P. D. A. Div.**—*Wreck—Report—Decision—Reasons*.—The decision of the judge after an investigation into a casualty, dealing with the certificate of an officer, must be given in open Court, but need not be accompanied by reasons, and if so accompanied, the officer is not entitled to a copy of the shorthand writer's notes of the reasons^a for the purpose of an appeal.—*The Kestrel*, 45 L.T. 111.

Solicitor :—

- (ii.) **Ch. Div. F. J.**—*Lien for Costs—Property Recovered or Preserved—23 & 24 Vict., c. 127, s. 28*.—A bankrupt having brought an action against C. for payment for work done, C. paid a sum into Court, and the bankrupt's trustee obtained an order to be added as plaintiff and to have the conduct of the action: *Held* that the solicitor who had acted for the bankrupt was not entitled to a charging order under sec. 28 of Solicitor's Act, 1860 on the money in Court, for his taxed costs of the action.—*Emden v. Carter*, 44 L.T. 840; 29 W.R. 840.
- (iii.) **Q. B. Div.**—*Money received by Town Agent—Refusal to pay Client—Summary Jurisdiction*.—The town agent of plaintiff's solicitor in an action in which a sum of money had been recovered, refused to pay over the money to the plaintiff on the ground that he was entitled to retain it for a debt due from the country solicitor: *Held* that the Court, in the exercise of its summary jurisdiction, would order the agent to pay over the money.—*Ex parte Edwards*, L.R. 7 Q.B.D. 155; 50 L.J. Q.B. 541; 45 L.T. 211.

Trade Mark :—

- (iv.) **C. A.**—*Infringement—Interim Injunction*.—Plaintiffs and defendants were bottlers of beer for export, and the former used a label with a bull dog's head on it. Defendants began using a label with a terrier's head. An interim injunction was granted restraining defendant's from continuing to use their label.—*Reid v. Richardson*, 45 L.T. 54.
- (v.) **Ch. Div. V. C. B.**—*Registration—Identical Trade Marks—Partnership—Dissolution*.—Registration of identical old trade marks will be allowed up to the number of three; but if there are more than three applications for the same mark it will be treated as common. Where an outgoing partner was entitled to manufacture an article from a recipe the property of the firm: *Held* that he was entitled to use the old trade mark and have it registered, though identical with that used by the successors of the firm.—*Benbow v. Low*, 44 L.T. 875; 29 W.R. 837.

Trustee :—

- (vi.) **Ch. Div. F. J.**—*Breach of Trust—Liability—Shares in Company—New Shares*.—Part of trust property consisted of shares in a company. New shares were allotted in respect of these shares; and the new shares were taken up by one of the *sestius-que-trust*, who had been allowed by the trustee to get possession of the trust property, and who afterwards made away with the original and new shares: *Held* that the trustee was liable for the value of the new shares as well as the original shares, at the present time, subject to an inquiry whether any portion of such value resulted from moneys belonging to the estate.—*Briggs v. Massey*, 50 L.J. Ch. 747; 45 L.T. 139; 29 W.R. 926.
- (vii.) **C. A.**—*Direction to carry on Business—Trade Assets—Judgment. Creditor*.—An executor carried on his testator's business for nine years, under

a power enabling him to do so: *Held* that the executor had no power to pledge the lease of the business premises, and that a creditor of the executor was not entitled to execution against the trade assets.—*Pillgrem v. Pillgrem*, 45 L.T. 188.

Vendor and Purchaser:—

- (i.) **Ch. Div. F. J.**—*Specific Performance*.—Specific performance of an agreement for the sale of land "subject to a contract to be settled," or "subject to a proper contract," will not be enforced.—*Harvey v. Principal of Barnard's Inn*, 50 L.J. Ch. 750; 29 W.R. 922.
- (ii.) **C. A.**—*Specific Performance—Statute of Frauds*.—Defendants wrote to a house agent that they were willing to purchase the lease of certain premises, of which plaintiff was lessee, at a certain price, and the agent replied that he was instructed to accept the offer, and would forward a contract as soon as obtained from the solicitor: *Held* that no binding contract had been entered into, because there was no sufficient description of the vendor to satisfy the Statute of Frauds, and because the agreement was incomplete as to terms.—*Donnison v. People's Café Co.*, 45 L.T. 187.

Waste:—

- (iii.) **Q. B. Div.**—*Tenant for Life—Permissive Waste*.—An action for permissive waste will not lie against a tenant for life.—*Barnes v. Dowling*, 44 L.T. 809.

Will:—

- (iv.) **Ch. Div. V. C. H.**—*Charity—Mortmain*.—Testator directed his trustees to set apart out of pure personalty a sum to be applied in the establishment of a soup kitchen and cottage hospital, and also a sum to be applied in establishing an Independent chapel at A.: *Held* that the first bequest was valid and the second void.—*Biscoe v. Jackson*, 50 L.J. Ch. 597; 45 L.T. 8.
- (v.) **Ch. Div. F. J.**—*Construction—Annuity—Charge on Realty—Demonstrative Legacy—Priority*.—Testator, after giving certain pecuniary legacies, gave an annuity to his wife for life, charging it upon a freehold estate at H.; and he then gave other legacies with the payment of which he charged his real and personal estate. The personalty proved insufficient to pay all the legacies: *Held* that the wife was entitled to have her annuity paid in full out of the proceeds of the H. estate, in priority to the other legacies.—*Briggs v. George*, 29 W.R. 925.
- (vi.) **Ch. Div. F. J.**—*Construction—Gift Over—Survivor*.—Testator gave the income of £10,000 consols to his wife for life, after her death he gave the income equally among his four daughters, and after their respective deaths he gave one-fourth of the consols to the children of each daughter, and if any of the daughters should die without leaving issue, the consols intended for the issue of her or them should go to the survivors or survivor of the daughters. He gave his residue to his wife and four daughters. Three daughters died leaving issue; the fourth was a spinster aged fifty-four: *Held* that she was entitled absolutely to one-fourth of the consols.—*Davidson v. Kimpton*, 45 L.T. 182; 29 W.R. 912.
- (vii.) **Ch. Div. F. J.**—*Construction—Gift Over on Death before Division*.—Testator having given property on trust for conversion and division among four persons, declared that if any of them should die before the final division of his estate, the share of him so dying should go to his children: *Held* that the gift over, took effect only in case of death within a year of testator's death.—*Spencer v. Duckworth*, 29 W.R. 911.

- (i.) **Ch. Div. V. C. M.**—*Construction—Legacy—Substitution—Issue of Children dying in Lifetime.*—Testatrix gave personalty to trustees upon trust, after A.'s death, for A.'s children share and share alike, provided that in the case of the children dying in her lifetime leaving issue, such issue should take the share to which their parent would have been entitled if living. One child was dead at date of will, and a codicil shewed that testatrix knew this : *Held* that the issue of that child took a share.—*Re Lucas's Will*, L.R. 17 Ch. D. 788 ; 29 W.R. 860.
 - (ii.) **C. A.**—*Construction—Power of Sale—Determination of.*—Testator gave residuary estate to trustees upon trust for his wife for life, and after her decease to pay, transfer, or assign the same to his two daughters in equal shares as tenants in common, with a gift over in favour of issue of the daughters in certain events which did not happen, and for the purpose of division he empowered his trustees to sell his residuary estate. The daughters survived the testator and his wife : *Held* that the power of sale had determined.—*Peters v. Leves and East Grinstead Rail. Co.*, 29 W.R. 874.
 - (iii.) **Ch. Div. V. C. H.**—*Construction—Residuary Gift.*—Testatrix, after making certain pecuniary and specific bequests, gave "all the rest of her money however invested" to her nephew, and she then made certain other specific gifts of personalty : *Held* that the gift to the nephew was a residuary gift.—*Walker v. Stewart*, L.R. 17 Ch. D. 819 ; 50 L.J. Ch. 689 ; 45 L.T. 11.
 - (iv.) **Ch. Div. F. J.**—*Estate pur Autre Vie—Executory Devise—Renewable Leaseholds.*—Leaseholds for lives, renewable by usage, were devised to trustees on trust to receive rents and thereout to renew, and to hold on trust for J., his heirs and assigns ; but if J. should die without issue then for W. his heirs and assigns. One of the lives dropped and the reversioner refused to renew. The property having been sold under 19 & 20 Vict., c. 120 : *Held* that the proceeds of sale ought to be invested in securities, the income of which should follow the limitations of the leaseholds.—*Re Barber's Settled Estates*, 29 W.R. 909.
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Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times
Reports, and Weekly Reporter,

FOR NOVEMBER AND DECEMBER, 1880, AND JANUARY, 1881.*

By HENRY M. KEARY, of Lincoln's Inn, Barrister-at-Law.

Administration:—

- (vii.) **Ch. Div. M. R.**—*Administrator Durante Minore Etate—Sale of Assets.*—An administrator, *durante minore etate*, has the powers of an ordinary administrator, including the power to sell the estate of the deceased for payment of his debts.—*Cope v. Cope*, L.R. 16 Ch. D. 49; 50 L.J. Ch. 18; 43 L.T. 566; 29 W.R. 98.
- (viii.) **C. A.**—*Charge of Debts—Real Estate—Sale by Administrator—22 & 23 Vict., c. 35, s. 16.*—An administrator has no power, such as an executor has, to sell a testator's real estate for payment of debts.—*Re Clay and Telley*, L.R. 16 Ch. D. 3; 43 L.T. 402; 29 W.R. 5.
- (ix.) **Ch. Div. V. C. B.**—*Executor—Creditor's Action by—Retainer.*—An executor, by instituting an administration action on behalf of himself and all other creditors, does not waive his right to retain his debt out of the balance of moneys found due from himself and his co-executor to the estate.—*Campbell v. Campbell*, 29 W.R. 233.
- (x.) **Ch. Div. V. C. M.**—*Foreign Creditor—Judgment in Foreign Court.*—Though judgment has been given for the administration of an estate, the Court cannot restrain a foreign creditor from proceeding in a foreign Court against the administrator; but if judgment be obtained in such Court against the administrator by default, it will only be treated in the administration as *prima facie* evidence of the debt.—*Crofton v. Crofton*, L.R. 15 Ch. D. 591; 49 L.J. Ch. 689; 29 W.R. 169.
- (xi.) **P. D. A. Div.**—*Intestacy—Next-of-Kin Abroad—Administration by Creditor.*—An application by a creditor for a grant of administration of an intestate's estate in default of appearance by next-of-kin, must be supported by an affidavit of the amount and nature of the debt, and the date when incurred. When a deceased's next-of-kin are abroad, or have no known address, and fail to appear to a citation by advertisement, an

* Cases reported only in the *Law Times Reports* or *Weekly Reporter* for January 29th, are postponed till the May Digest.

affidavit is requisite that service of the citation has been attempted and failed, and that the next-of-kin have no known agent in England.—*In the goods of Von Desen* 43 L.T. 532.

- (xii.) **Ch. Div. F. J.**—*Irish Administration—Administration in India—Discharge.*—Letters of administration of her husband's estate were granted to a widow in Ireland. The husband died in Ireland, but had property in India, and letters of administration were granted there to persons as the widow's attorneys, who collected the estate there and sent the balance, after payment of debts, to England, with instructions to pay it to the party entitled on getting a proper release. There was no evidence of deceased's domicile: *Held* that he must be considered as domiciled in Ireland, and that the receipt of the widow was a sufficient discharge for the money from India.—*Eames v. Hacon*, 43 L.T. 567.
- (xiii.) **C. A.**—*Leaseholds—Sub-letting.*—It is *ultra vires* and a breach of trust for an executor or administrator to grant an underlease of leaseholds of his testator or intestate, with an option of purchase, to be exercised by the sub-lessee at a future time at a fixed price.—*Oceanic Steam Navigation Co. v. Sutherland*, 29 W.R. 113.

Agreements and Contracts :—

- (xii.) **Ch. Div. F. J.**—*Agreement unproved in part—Specific Performance—Damages—Fraud on Public.*—P. sought specific performance or damages for breach of an agreement by M. for the publication of a book by P., to be written by M., and to be described on the title-page as by K. (assisted by M.). K. had in fact nothing to do with the book. The agreement was stated to be contained in three documents, only two of which plaintiff proved: *Held* that, having failed to prove the whole of the agreement, P. could not have either specific performance or damages; and that, if he had proved the agreement, M. could not have been compelled to perform his part of it.—*Post v. Marsh*, 43 L.T. 628; 29 W.R. 198.
- (xiii.) **Ch. Div. F. J.**—*Unconscionable Bargain—Money Lending—Expectant Heir.*—The equitable relief granted from an unconscionable bargain entered into with an expectant heir or reversioner may also be granted where the borrower is the son of a man of large property, but has no property of his own or expectation except such general expectations as are founded on his father's position in life.—*Nevill v. Snelling*, L.R. 15 Ch. D. 679; 49 L.J. Ch. 777; 43 L.T. 244.

Arbitration :—

- (iii.) **Ex. Div.**—*Award—Time for Setting Aside—Complaint in Court.*—9 & 10 Will. III., c. 15, s. 2.—An *ex parte* application to set aside or vary an award published on July 14th, was made in Court on November 24th, but not entertained because no notice of motion had been given. On the same day, notice was given that the Court would be moved on the 27th: *Held* that the motion was not too late, as the notice of motion given on the 24th was a complaint in Court within sec. 2 of 9 & 10 Will. III., c. 15.—*Smith v. Parkside Co.*, L.R. 6 Q.B.D. 67; 29 W.R. 154.

Bankruptcy :—

- (xxiv.) **C. J. B.**—*Adjudication Pending Administration—Judgment Creditor.*—A person whose assets were being administered in the Chancery Div. for the benefit of his creditors, was adjudicated a bankrupt on the petition of a judgment creditor whose judgment had been obtained more than twenty years previously: *Held* that the adjudication must be annulled.—*Ex parte Tynte, Re Tynte*, L.R. 15 Ch. D. 125.

- (xxv.) **C. J. B.**—*Composition—Close of Proceedings—Secured Creditor.*—After liquidation proceedings are closed, a secured creditor cannot apply to the Court of Bankruptcy to enforce his security.—*Ex parte Woods, Re Holmes*, 43 L.T. 447; *Ex parte Holmes, Re Holmes*, 29 W.R. 124.
- (xxvi.) **C. A.**—*Composition—Debtor's Statement—Omitted Debt—Judgment Creditor.*—A judgment creditor, who was not included in the statement of a debtor in a composition arrangement, applied to the Court to admit proof of his debt after registration of the composition resolutions and payment of the composition: *Held* that the Court had no jurisdiction.—*Ex parte Lacey, Re Lacey*, 43 L.T. 579.
- (xxvii.) **Ex. Div.**—*Composition—Non-Assenting Creditor—Tender of Composition.*—Where creditors of a debtor have agreed to accept a composition, in order that the debtor may be discharged from liability for debts included in his statement, he must pay or tender unconditionally to his creditor the composition payable on the admitted debt.—*The Tea Company v. Jones*, 43 L.T. 255.
- (xxviii.) **Ch. Div. V. C. H.**—*Composition—Administration—Set off—Bankruptcy Act, 1869, s. 28.*—The creditors of a bankrupt passed a resolution for accepting a composition, on condition of the bankruptcy being annulled. A creditor, who had not proved in the bankruptcy or received the composition, afterwards died, having by his will bequeathed a legacy to the debtor: *Held* that the executors were not entitled to set off the original debt due to the testator against the bequest, but only the composition on the debt, and that though the debt was incurred more than six years before the bankruptcy, this right was not affected by the Statute of Limitations.—*Beswick v. Orpen*, 50 L.J. Ch. 25.
- (xxix.) **P. C.**—*Costs—Trustee—Personal Liability.*—Under the Bankruptcy Act, 1869, a trustee may be made personally liable for costs incurred by him.—*Pitts v. La Fontaine*, 43 L.T. 519.
- (xxx.) **C. C. R.**—*Debtor's Statement—Disclosure of Property—Misdemeanour—32 & 33 Vict., c. 62, s. 11 (1).*—The disclosure required of a bankrupt by sec. 11, sub-sec. 1, of the Debtors Act, 1869, is not restricted to property in his possession at the commencement of his bankruptcy.—*Regina v. Mitchell*, 43 L.T. 572.
- (xxxi.) **C. A.**—*Elegit—Seizure—Bankruptcy Act, 1869, s. 87.*—A sheriff having seized a trader's goods under an *elegit*, after an inquisition had been held, delivered them to the judgment creditor. After seizure and before delivery the debtor filed a liquidation petition: *Held* that the execution creditor was entitled to the goods seized.—*Ex parte Abbott, Re Gourlay*, L.R. 15 Ch. D. 447; 50 L.J. Ch. 80; 43 L.T. 417; 29 W.R. 143.
- (xxxii.) **C. A.**—*Execution—Notice of Act of Bankruptcy.*—Notice after seizure and before sale to an execution creditor that a petition in bankruptcy has been filed against his debtor, is constructive notice of an act of bankruptcy having been committed by the debtor.—*Lucas v. Dicker*, 43 L.T. 429; 29 W.R. 115.
- (xxxiii.) **C. J. B.**—*Fraudulent Preference—Bankruptcy Act, 1869, ss. 6, 92.*—A. and B. kept a joint account at a bank as trustees, and A., having overdrawn the account and misappropriated the money, in order to recoup the trust estate sold to B. some wool, who advanced £2,050 on account, and agreed to take the wool at a valuation. A. was at the time insolvent, and shortly afterwards became a liquidating debtor: *Held* that this was a *bond fide* sale, and did not constitute a fraudulent preference.—*Ex parte Gaunt, Re Wilkinson*, 43 L.T. 448.

- (xxxiv.) **C. A.**—*Jurisdiction — Residence of Debtor — Debtor's Summons — Bankruptcy Act, 1869, s. 59.*—A man was employed as clerk at a bank in the city, and slept at a house in Beckenham. He was served with a debtor's summons in the London Bankruptcy Court: *Held* that the Court had jurisdiction to grant the summons.—*Ex parte Brewell, Re Bowie, 43 L.T. 580.*
- (xxxv.) **C. J. B.**—*Liquidation—Prosecution of Debtor and Accomplices—Person Aggrieved—32 & 33 Vict., c. 62, s. 16; Bankruptcy Act, 1869, s. 71.*—The Court has a discretionary power under the Debtors Act, 1869, sec. 16, to order a creditor to prosecute the trustee, debtor, and accomplices for conspiracy; and if the charge against the accomplices fails, they are not persons aggrieved within sec. 71 of the Bankruptcy Act, 1869.—*Ex parte Evans, Re Orbell, 43 L.T. 575; 29 W.R. 200.*
- (xxxvi.) **C. A.**—*Liquidation — Registration of Resolutions — Bankruptcy Act, 1869, ss. 28, 125.*—A debtor committed an act of bankruptcy on a debtor's summons. On the next day bankruptcy proceedings were begun against him in the County Court, and he began liquidation proceedings in London. After he had been adjudicated bankrupt, resolutions in the liquidation were passed and confirmed accepting a composition. Some creditors opposed the registration of the resolutions: *Held* that they ought not to be registered.—*Ex parte Milward, Re Stanley, 29 W.R. 167.*
- (xxxvii.) **C. J. B.**—*Proof—Cheques given on Conditions—Transferee.*—C. gave cheques to J. on the understanding that they were not to be presented until funds had been raised, on bills drawn by J., to meet the cheques. J. afterwards deposited the cheques with H. as security for money advanced: *Held* that H. having taken the cheques without inquiry, took them subject to the equities attaching to them, and could not prove in respect of them on C.'s bankruptcy.—*Ex parte Hughes, Re Cobb, 43 L.T. 577.*
- (xxxviii.) **C. A.**—*Proof—Lease to Partners—Disclaimer—Joint and Separate Estate.*—A lease was granted to four partners with a joint and separate covenant to pay rent. One partner died and the other three carried on the business till bankruptcy, when the trustee disclaimed the lease: *Held* that the lessor could prove in respect of the disclaimer against the separate estates of the bankrupts, and not against their joint estate.—*Ex parte Corbett, Re Shand, 49 L.T. Boy. 74.*
- (xxxix.) **C. J. B.**—*Proof—Secured Creditor—Mistake—Rectification—Res Judicata.*—A creditor who had proved a debt, subsequently discovered that he had omitted to state and value a security, and applied for leave to withdraw his proof and file an amended one. Leave was granted on condition that he should not be at liberty to add to or vary the security mentioned in the first proof. The trustee in bankruptcy applied for an order declaring that he was entitled to the proceeds of the omitted security: *Held*, that as there had been a *bonâ fide* mistake by the creditor, he was entitled to have it rectified and to amend his proof by stating the omitted security, and that the matter was not *res judicata*.—*Ex parte Whitton, Re Greaves, 43 L.T. 480.*

Bill of Sale:—

- (xi.) **C. A.**—*Consideration—41 & 42 Vict., c. 31, s. 8.*—Decision of C.J.B. (see *Bill of Sale v.*, p. 7) reversed.—*Ex parte Challinor, Re Rogers, 29 W.R. 205.*
- (xii.) **C. A.**—*Consideration—41 & 42 Vict., c. 31, s. 8.*—A duly attested bill of sale was expressed to be made in consideration of £120 advanced

upon its execution by the grantee to the grantor. In fact only £90 was paid to the grantor, £30 being retained for interest and expenses by the grantee. After the attestation clause there was a receipt signed by the grantor which stated that the £90 together with the agreed sum of £30 for interest and expenses made up the £120, "the consideration money within expressed to be paid." *Held* that the receipt was not part of the bill, and that the consideration was therefore not truly stated.—*Ex parte Charing Cross Bank, Re Parker*, L.R. 16 Ch. D. 35; 29 W.R. 204.

- (xiii.) **C. J. B.**—*Consideration*—41 & 42 Vict., c. 31, s. 8.—The consideration in a bill of sale dated 14th January, 1879, was stated to be £65, "now paid" by the grantee to grantor. The £65 was in fact advanced by instalments between 16th of April, 1877, and 16th of October, 1878: *Held* that the consideration was not truly stated within sec. 8 of the Bills of Sale Act, 1878.—*Ex parte Berwick, Re Young & Co.*, 43 L.T. 576.
- (xiv.) **C. J. B.**—*Consideration*—41 & 42 Vict., c. 31, s. 8.—A bill of sale stated that grantor was indebted to grantee in a certain sum, and had agreed to execute the bill in order to induce the grantee not to institute proceedings against him. In fact the sum due by the grantor had been advanced by the grantee shortly before the execution of the bill of sale, on the express understanding that good security should be given, and no proceedings had been threatened by the grantee: *Held* that the consideration was properly stated within the Bills of Sale Act, 1878.—*Ex parte Ord, Re Fothergill*, 43 L.J. 637.
- (xv.) **C. P. Div.**—*Consideration—Unregistered Bill—Bill in Lieu of*—41 & 42 Vict., c. 31, ss. 8, 9.—A bill of sale stated that it was given in consideration of the payment of £81: *Held* that it was valid though the money had been paid two months previously. Section 9 of Bills of Sale Act, 1878, applies only to a bill given within seven days after the prior unregistered bill.—*Carrard v. Meek*, 29 W.R. 244.
- (xvi.) **C. A.**—*Growing Crops—Crops Severed—Bankruptcy*—41 & 42 Vict., c. 31.—Growing crops so soon as they are severed become personal chattels within the Bills of Sale Act, and are not protected against a trustee in bankruptcy by an unregistered assignment.—*Ex parte National Mercantile Bank, Re Phillips*, 29 W.R. 227.
- (xvii.) **C. A.**—*Registration—Affidavit—Solicitor for both Parties*—17 & 18 Vict., c. 36.—An affidavit filed with a bill of sale is good, though sworn before a solicitor acting for grantor and grantee of the bill.—*Vernon v. Cooke*, 49 L.J. C.P. 767.

Charity :—

- (i.) **Ch. Div. V. C. H.**—*Scheme—Charity Commissioners.*—Property was left by Lord C. in 1629, the income to be yearly employed for the good and benefit of the poor of the parish of K, in such manner as the trustees should think fit; and property was left by Lady C. on trust to apply one-half the income for the better relief of the most poor and needy in the parish of K, and the other half towards apprenticing poor boys in the parish. Five new ecclesiastical districts were formed out of the parish of K, and an order was made in 1852 apportioning the charitable funds between the districts and the original parish: *Held* that the Charity Commissioners, in confirming a new scheme, might apply part of the revenue of Lord C.'s gift to educational purposes, and that Lady C.'s gift must be applied as to one-half in giving pensions and other relief to the poor, and the other half in apprenticing boys; and that regard must be had to the distribution of income directed by the order of 1852.—*Re The Campden Charities*, 49 L.J. Ch. 676.

Company :—

- (xxi.) **Ch. Div. M. R.**—*Articles—Number of Directors—Call—Ultra Vires.*—Articles of a company provided that its business should be carried on by not less than five directors, and that a director becoming insolvent should vacate his office. There were five directors, of whom one became insolvent, and the company, at a quarterly meeting, resolved that the business should be conducted by four directors: *Held* that this resolution was invalid, and therefore that the four directors could not make a call.—*Re Alma Spinning Co.*, 43 L.T. 620; 29 W.R. 133.
- (xxii.) **Ch. Div. V. C. H.**—*Debenture Stock—Priority.*—A railway company were empowered by their Act to borrow £250,000 on mortgage, and to issue debenture stock subject to the provisions of part 3 of the Companies Clauses Act, 1863; but all debenture stock at any time created should rank *pari passu* with the interest of all mortgages at any time granted by the company, and should have priority over all principal moneys secured by such mortgages. By a subsequent Act the company were empowered to raise additional capital, and to borrow on mortgage to the extent of £25,000, and the Act gave similar powers of issuing debenture stock and provided that the interest of all debenture stock created after the passing of the Act should rank *pari passu* with the interest of mortgages created after the Act, and have priority over the principal moneys of such mortgages: *Held* that the interest on mortgages and debenture stock created before the second Act had priority over the interest on debenture stock issued after the second Act; and that the principal of mortgages issued under the first Act would be payable in priority to interest of debenture stock issued after second Act.—*Harrison v. Cornwall Mineral Rail. Co.*, L.R. 16 Ch. D. 66; 49 L.J. Ch. 834; 43 L.T. 496.
- (xxiii.) **C. A.**—*Director—Contract—Trust—Liability.*—Plaintiff deposited £1,000 with a company on the terms that it should remain with them for five years, the company to pay £6 per cent. interest and transfer to him as security a mortgage made to them, and if the mortgage should become ineffective during the five years, they should replace it with another. The mortgage was paid off during the five years, but was not replaced by another, and the company dealt with the proceeds as part of their general funds. The company having gone into liquidation, plaintiff brought an action against the directors for the £1,000, on the grounds that it was lost to him by reason of defendants' gross negligence: *Held* that the directors were not liable.—*Wilson v. Lord Bury*, L.R. 5 Q.B.D. 518.
- (xxiv.) **C. A.**—*Illegal Association—Investment Trust—Companies Act, 1862.*—Shares in submarine telegraph companies to the amount of £400,000 were purchased by subscription and vested in trustees, and each subscriber of £90 received a certificate for the nominal sum of £100 and a deferred coupon for a proportionate share of the funds. The trustees were to apply the income in paying £6 per cent. on the certificates, with certain powers of sale and re-investment. There were more than twenty subscribers: *Held* that they did not form an association within sec. 4 of Companies Act, 1862.—*Smith v. Anderson*, L.R. 15 Ch. D. 247; 50 L.J. Ch. 39; 43 L.T. 329; 29 W.R. 21.
- (xxv.) **C. A.**—*Promoter—Prospectus—Concealment of Contract—30 & 31 Vict., c. 131, s. 38.*—B. and C. agreed with the promoters of a company formed for the purchase of a patent belonging to them for £56,000, that £54,000 out of the purchase money should be divided between the promoters: *Held* that this agreement ought to have been specified in the prospectus of the company, and that its omission rendered the defendants liable

under sec. 38 of the Companies Act, 1867, to subscribers on the faith of the prospectus.—*Sullivan v. Metcalfe*, L.R. 5 C.P.D. 455; 49 L.J. C.P. 815; 29 W.R. 181.

- (xxvi.) **Ch. Div. F. J.**—*Promoter—Prospectus—Material Concealment—Measure of Damages.*—Vendors of a business to a company, in accordance with a previous understanding, transferred 800 paid-up shares to some of the directors. The prospectus did not disclose this, and plaintiff took shares in the company on the faith of the prospectus: *Held* that the non-disclosure of the understanding was a fraudulent concealment, and that plaintiff having retained his shares after he knew of the understanding, was entitled to damages from the directors to the extent of the difference between the price he paid for the shares, and what would have been a reasonable price under the circumstances.—*Arkwright v. Newbold*, 49 L.J. Ch. 684.
- (xxvii.) **C. A.**—*Winding-up—Action brought before—Costs.*—An action was brought by two shareholders on behalf of themselves and all others, to impeach a contract made with the company on the ground of fraud. Before the trial the company was wound-up, and the action was dismissed by consent without costs: *Held* that the Court could not order plaintiffs' costs to be paid out of the assets in the winding-up.—*Re Hull Central Drapery Co.*, L.R. 15 Ch. D. 326; 29 W.R. 161.
- (xxviii.) **Ch. Div. M. R.**—*Winding-up—Commencement of—Debentures*—A company having power to borrow issued debentures, whereby they bound themselves and their successors, and their real and personal estate for payment of the sums advanced. The company went into liquidation, a provisional liquidator having been appointed on their petition, and a resolution for a voluntary winding-up having been passed, which was continued under supervision: *Held* that the debentures were a charge on the real and personal estate of the company, as it existed at the commencement of the winding-up, which was at the date of appointment of the provisional liquidator.—*Ex parte Bradshaw, Re Colonial Trusts Corporation*, L.R. 15 Ch. D. 465.
- (xxix.) **Ch. Div. V. C. H.**—*Winding-up—Contributory—Director—Qualification.*—P. was invited to become a director of a company, whose articles provided that a director's qualification should be the holding of ten shares, and he accepted the offer, and acted as director for a short time. No shares were ever allotted to him, and he afterwards resigned, but his resignation was declined, and an action was brought against him for calls due on his qualification shares, which was dismissed for want of prosecution. On the winding-up of the company: *Held* that P. must be put on the list of contributories in respect of the qualification shares.—*Purcell's Case, Re Hampshire Co-operative Milk Co.*, 29 W.R. 170.
- (xxx.) **C. A.**—*Winding-up—Contributory—Insurance Company.*—Decision of V.C.M. (see *Company* iv., p. 10) affirmed.—*Re Albion Life Assurance Society*, 43 L.T. 523; 29 W.R. 109.
- (xxxi.) **Ch. Div. V. C. H.**—*Winding-up—Director—Misfeasance—Lapse of Time—Companies Act, 1862, s. 165.*—A liquidator in a winding-up, which began in 1876, applied in 1879 for an order against directors to repay a dividend declared by them in 1872. The application was dismissed as a stale demand.—*Re Mammoth Copperopolis of Utah*, 30 L.J. Ch. 11.
- (xxxii.) **C. P. Div.**—*Winding-up—Loan Society—Set-off—3 & 4 Vict., c. 110.*—Defendant, a member of a co-operative loan society, having given the requisite notice to withdraw the money paid by him to its funds, the directors, who were unable to pay the amount, granted him a loan of £15. The rules of the society provided that members who were borrowers could not withdraw their deposits until the loan was repaid, and if there

were more applications to withdraw than there were funds to meet the requirements, the claims of each applicant would be considered by precedence. On the winding-up of the society, the liquidator brought an action in the County Court for the balance of defendant's loan: *Held* that defendant could not set off the money paid by him into the funds of the society against his loan.—*Phillipson v. Beale*, 43 L.T. 508.

- (xxxiii.) **C. A.**—*Winding-up—Mutual Insurance Society*—33 & 34 Vict., c. 61, ss. 21, 22.—In a mutual assurance society, in which the liability of members is limited to funds in the directors' hands, policy holders are not liable for the society's debts; and, in a winding-up, the funds are divisible *pro rata* among the policy holders for the time being, subject to costs. The Court will, with the consent of the policy holders, order the reduction of the policies under sec. 22 of the Life Assurance Companies Act, 1870, instead of a winding-up.—*Re Great Britain Mutual Assurance Society*, 29 W.R. 202.
- (xxxiv.) **C. A.**—*Winding-up—Payment of Debts—Execution Creditor—Bankruptcy Act, 1869, s. 87; Judicature Act, 1875, s. 10.*—Sec. 10 of Judicature Act, 1875, does not make sec. 87 of the Bankruptcy Act, 1869, applicable to the winding-up of companies.—*Re Withernsea Brick Works*, 29 W.R. 178.

Copyholds:—

- (i.) **C. A.**—*Inclosure of Waste—Encroachment—Copyhold Tenant.*—The lord of a manor granted to M., in 1808, a license to inclose part of the waste, and hold it as yearly tenant so long as he should continue governor of a neighbouring fort. M. ceased to be governor in 1811, and since then the inclosed land had been in possession of the Crown. In 1809, a copyhold of the manor adjoining the inclosed land was surrendered to trustees for the Crown: *Held* that the inclosure was not an encroachment, as it was made under license, and that the Crown had acquired a freehold title to the land inclosed.—*Attorney-General v. Tomline*, L.R. 15 Ch.D. 150; 43 L.T. 486.

Copyright:—

- (iv.) **Ch. Div. V. C. B.**—*Title of Book—Registration*—5 & 6 Vict., c. 45, ss. 2, 16.—The title of a book is part of a book, and by registration the owner may acquire a statutable copyright title.—*Dicks v. Yates*, 43 L.T. 470; 29 W.R. 135.

County Court:—

- (ii.) **C. A.**—*Admiralty Jurisdiction*—32 & 33 Vict., c. 51 s. 2.—Sec. 2 of the County Courts Admiralty Jurisdiction Amendment Act, 1869, gives the County Courts jurisdiction in cases of claims arising out of charter-parties or other agreements for hire of ships, though the Admiralty Court may have no original jurisdiction in such cases.—*The Alina. Brown v. The Alina*, 29 W.R. 94.
- (iii.) **Q. B. Div.**—*Control over by High Court—Notes by Judge—Signing Notes*—38 & 39 Vict., c. 50, s. 6.—The High Court of Justice has no power either to order a County Court Judge to re-enter a cause on his list, or to order him to sign notes taken by him at the trial, where no request to make a note of a question of law was made to him at the trial.—*Morgan v. Rees*, 29 W.R. 213.
- (iv.) **C. A.**—*Interpleader—Stay of Action*—30 & 31 Vict., c. 142, s. 31.—Plaintiff, whose goods had been taken in execution, brought an action against the high bailiff and the persons who had bought the goods from him: *Held* that the action could be stayed as against the high bailiff,

but not as against the purchasers of the goods.—*Hills v. Renny*, L.R. 5 Ex. D. 313; 49 L.J. Ex. 710.

Crimes and Offences :—

- (vi.) **Q. B. Div.**—*Adulteration—Delivery of sample to Agent of Seller*—38 & 39 Vict., c. 63, s. 14; 42 & 43 Vict., c. 30, s. 3.—Section 14 of Sale of Food and Drugs Act, 1875, is not incorporated into sec. 3 of 42 & 43 Vict., c. 30.—*Rouch v. Hall*, L.R. 6 Q.B.D. 17; 50 L.J. M.C. 6.
- (vii.) **C. P. Div.**—*Assault—Consent—Submission*.—An action for assault will not lie merely because the complainant has submitted unwillingly to the act complained of, and where there is no evidence of any force, threats, or compulsion having been used.—*Latter v. Braddell*, 43 L.T. 605; 29 W.R. 239.
- (viii.) **Q. B. Div.**—*Defect in Conviction—Return—Right to Substitute fresh Conviction—Certiorari*.—Where justices have convicted for an offence unknown to the law, and have returned the conviction to the clerk of the peace, the Court will allow a rule for a certiorari to go, though the justices return a corrected record of the conviction showing it to have been properly made.—*Ex parte Austin*, 50 L.J. M.C. 8.
- (ix.) **C. P. Div.**—*False Imprisonment—Malicious Prosecution*.—Defendant told a police-constable that some of his property had been stolen, and that it was last seen in the possession of D.; and thereupon the constable arrested D., who was taken before a magistrate, and committed for trial: *Held* that defendant was not liable in an action by D. for false imprisonment and malicious prosecution.—*Danby v. Beardsley*, 43 L.T. 603.
- (x.) **C. C. R.**—*Manslaughter—Rifle Practice—Dangerous Place*.—Three persons went out together for rifle practice in a place where such practice would be dangerous to the public. Several shots were fired, and by one of them a boy was killed, but it was uncertain which of the three fired that shot: *Held* that all three were guilty of manslaughter.—*Regina v. Salmon*, L.R. 6 Q.B.D. 79; 43 L.T. 573; 29 W.R. 246.

Debtor and Creditor :—

- (v.) **C. A.**—*Bond—Loan Payable by Instalments—Default—Penalty*.—Plaintiffs lent money to S. upon a bond executed by himself and defendant as surety, under which the loan was repayable by instalments in five years, if S. should so long live, and was to become void on repayment or the death of S. It was provided that the balance of instalments should at once become payable on default made in payment of any instalment. S. made default in payment of an instalment: *Held* that plaintiffs could recover the whole of the balance.—*Protector Endowment Loan Co. v. Grice*, L.R. 5 Q.B.D. 592; 49 L.J. Q.B. 812; 43 L.T. 564.
- (vi.) **C. P. Div.**—*Bond Executed in India—Lex Loci contractus—Limitation of Actions*—3 & 4 Will. IV., c. 42, s. 3.—*Held* that where an action on a bond executed in India is brought in England, the remedy is not barred until after a lapse of twenty years, though in India a lapse of three years bars every remedy on such bond.—*Alliance Bank of Simla v. Carey*, L.R. 5 C.P.D. 429; 49 L.J. C.P. 781.
- (vii.) **C. A.**—*Stolen Cheque—Forged Indorsement—Negligence—Conversion*.—To a statement of claim alleging that a cheque payable to plaintiffs' order was stolen from them and the indorsement of their name forged upon it, and that it came into defendant's possession, who converted it to his own use; defendant pleaded that the theft of the cheque arose through the gross negligence of plaintiffs, and that if they had not been

grossly negligent they could have prevented the negotiation of the cheque after it was stolen: *Held*, on demurrer, a bad plea.—*Patent Safety Gun Cotton Co. v. Wilson*, 49 L.J. C.P. 713.

Defamation:—

- (iii.) **C. P. Div.**—*Slander—Inuendo*.—If words are not in themselves defamatory when taken in their primary sense, a plaintiff taking them in a secondary sense must show the existence of facts which would prove the inuendo contained in the secondary sense, and if he fails to do so the judge should direct the jury that the words are not defamatory.—*Ruel v. Tatnell*, 43 L.T. 507; 29 W.R. 172.

Easement:—

- (vi.) **Ch. Div. F. J.**—*Prescription—Interruption—Action by Tenant at Will*—2 & 3 Will. IV., c. 71, s. 8.—The tenant at will of property under C. who was tenant for life, brought an action to restrain defendant from doing certain acts on the property, to which defendant pleaded that he had acquired an easement by prescription. C. became entitled on the death of the last tenant for life in 1879: *Held* that the commencement of the action was a resistance made by a person entitled to a reversion expectant on the determination of a term of life, within sec. 8 of the Prescription Act.—*Laird v. Briggs*, 43 L.T. 632; 29 W.R. 197.

Ecclesiastical Law:—

- (iii.) **Q. B. Div.**—*Representation—Requisition—Official Principal—Writ de Contumace Capiendo*—5 Eliz., c. 22, s. 3; 53 Geo. III., c. 127, s. 1; 12 & 13 Vict., c. 109, ss. 26, 27; 37 & 38 Vict., c. 85.—In a London parish of which the Archbishop and the bishop of the diocese were joint patrons, a complaint of ecclesiastical offences was presented against the incumbent, under sec. 8 of the Public Worship Regulation Act, 1874, and was duly transmitted to another bishop under sec. 16, and he in pursuance of sec. 9, required the judge of the Provincial Courts of Canterbury and York, who was *ex officio* Official Principal of the Canterbury Arches Court, to hear the matter at some place within the diocese, or in London or Westminster. The judge heard the matter at the place fixed by him, convicted the incumbent, admonished him, and on his disobedience, inhibited him for three months. The incumbent had due notice of the proceedings but did not appear. The requisition, monition, and inhibition, followed the forms issued in June, 1875, in pursuance of the Act: *Held* that all the proceedings were regular; and that under sec. 7, of the Public Worship Regulation Act, 1874, the judge of the Provincial Court of Canterbury executes the office of Official Principal of the Arches Court by force of that Act, and not subject to any canon, and that sec. 3 of 5 Eliz., c. 22, and sec. 1 of 53 Geo. III., c. 127, so far as it incorporates the former section, are repealed by secs. 26, 27 of 12 & 13 Vict., c. 109.—*Ex parte Dale, Serjeant v. Dale*, 43 L.T. 534.

Election:—

- (viii.) **C. P. Div.**—*Municipal Election—Nomination Paper—Mistake*—38 & 39 Vict., c. 40, s. 1; 41 & 42 Vict., c. 26, s. 41.—The number on the burgess roll of the burgess nominating a candidate at a municipal election was wrongly stated in the nomination paper: *Held* that the returning officer rightly allowed an objection taken thereto.—*Gothard v. Clarke*, 29 W.R. 102.
- (ix.) **C. P. Div.**—*Parliament—County Vote—Claim—Proof of Notice*—6 & 7 Vict., c. 18, ss. 37, 38.—When the name of a person duly qualified to

vote for a county as a £12 occupier has been omitted from the owner's list, and notice of claim to be inserted is given, and the person's name is included in the list of persons claiming to have their names inserted, the revising barrister is justified in refusing to allow the name to be inserted, and in refusing to state a case where no evidence has been given before him, that the notice was signed by or on behalf of the claimant.—*Re Sale*, 43 L.T. 635.

- (x.) **C. P. Div.**—*Parliament—County Vote—Lands occupied together with House*—2 & 3 Will. IV., c. 45, ss. 24, 25, 27.—The expressions "occupied together with" and "occupied therewith" in sec. 25 of 2 & 3 Will. IV., c. 45, mean that the land and house must not only be occupied at the same time, but also they must be used together, in one occupation.—*Sanders v. Searson*, 43 L.T. 438.
- (xi.) **C. P. Div.**—*Parliament—Election Petition—Withdrawal*—31 & 32 Vict., c. 125, s. 36.—On an application under sec. 36 of Parliamentary Elections Act, 1868, for leave to withdraw a petition against the return of a member, petitioner and respondent must make a positive affidavit that they have not been parties to any corrupt arrangement, and must deny to the best of their knowledge, information and belief, that any such arrangement has been made by their agents; and the agents must also deny the existence of any such arrangement.—*Johnson v. Rankin*; *Issac v. Seeley*, L.R. 5 C.P.D. 553.

Evidence:—

- (vii.) **C. C. R.**—*Criminal Prosecution—Solicitor and Client—Instructions—Privilege*.—In order to make a client criminally responsible for a letter written by his solicitor, it must be shown that the letter was written in pursuance of the instructions of the client; and such letter is not inadmissible in a criminal case, on the ground of privilege.—*Regina v. Downer*, 43 L.T. 445.

Highway:—

- (vi.) **C. A.**—*Locomotive—Nuisance—Liability*—28 & 29 Vict., c. 83.—A person who, without negligence, uses a locomotive engine on roads, is liable for injuries caused to property of others by such user.—*Powell v. Fall*, L.R. 5 Q.B.D. 597; 43 L.T. 562.
- (vii.) **Q. B. Div.**—*Repair—Excessive Weight—Extraordinary Expenses*—41 & 42 Vict., c. 77, s. 23.—Appellant carried on a large traffic in stones on a highway from his quarry, which caused the repair of the highway to be more expensive than in an agricultural district. The stone traffic was a recognized business of the district: *Held* that he could not be ordered to contribute to the repairs of the road under sec. 23 of 41 & 42 Vict., c. 97.—*Wallington v. Hookins*, 43 L.T. 597; 29 W.R. 152.
- (viii.) **C. P. Div.**—*Tramway—Use by Unlicensed Persons*—33 & 34 Vict., c. 78, s. 54.—An omnibus proprietor attached to his omnibus a lever with arms, having a small revolving disk, which the driver could let into the groove of the tram-rail, at the side of each fore-wheel, when on the tramway, thus operating as a flange at the point of contact of the wheels with the rail: *Held* that this was within the prohibition contained in sec. 54 of the Tramways Act, 1870.—*Cottam v. Guest*, L.R. 6 Q.B.D. 70.

Husband and Wife:—

- (xiii.) **C. A.**—*Agent for Wife before Marriage—Action Against—Trust Property*.—A married woman sued defendant, whom she had appointed her agent before her marriage, in respect of property to which she was entitled before marriage in part absolutely and in part as trustee: *Held*

that she could recover in respect of the trust property only.—*Kingsman v. Kingsman*, 29 W.R. 207.

- (xiv.) **Ch. Div. V. C. M.**—*Agreement to settle Wife's Property*—*Statute of Frauds*.—A gentleman the day before his marriage wrote to the lady's solicitor, that in the event of his marrying her before the settlements were ready, he agreed to her fortune being settled on herself, "subject of course, to certain conditions, chiefly relating to myself and the children of the marriage (if any):" Held that the marriage must be presumed to have taken place on the faith of the agreement contained in the letter, and that there must be the usual reference to chambers to approve a proper settlement.—*Viret v. Viret*, 50 L.J. Ch. 69; 43 L.T. 493.
- (xv.) **C. A.**—*Bill Indorsed by Married Woman*—*Separate Estate*—*Judgment Against*.—In an action against a husband and wife on a bill of exchange indorsed by the wife, it appeared that, at the time of her indorsing it, she was entitled to a life interest in property for her separate use, but over which she and her husband had a power of appointment. After action brought, but before issue joined, the husband and wife appointed the wife's separate estate to her for her separate use without power of anticipation: Held that judgment could not be given against the husband and wife personally, nor against the wife's separate estate.—*Barber v. Gregson*, 49 L.J. Ex. 781; 43 L.T. 428.
- (xvi.) **P. D. A. Div.**—*Divorce*—*Lunatic*—*Petition by Committee*.—It is competent for the committee of a lunatic husband to file a petition on his behalf for a dissolution of marriage on the ground of his wife's adultery.—*Baker v. Baker*, L.R. 6 P.D. 12; 49 L.J. P.D.A. 83.
- (xvii.) **H. L.**—*Liability for Necessaries*—*Express Prohibition to Pledge Credit*.—Decision of Court of Appeal (see *Husband and Wife* vi., p. 18) affirmed.—*Debenham v. Mellon*, 29 W.R. 141.

Insurance:—

- (iii.) **C. A.**—*Life Insurance*—*Policy Moneys*—*Interest*.—A life insurance company is not liable to pay interest on the policy moneys due on a policy of insurance from the date of proof of the death of the insured.—*Webster v. British Empire Life Assurance Co.*, L.R. 15 Ch. D. 169; 49 L.J. Ch. 769; 43 L.T. 229.
- (iv.) **C. A.**—*Insurance against Accident*—*Death by Drowning whilst in an Epileptic Fit*.—Decision of Ex. Div. (see *Insurance* ii., p. 19) affirmed.—*Winspear v. Accident Insurance Co.*, L.R. 6 Q.B.D. 42; 43 L.T. 459; 29 W.R. 116.

Landlord and Tenant:—

- (viii.) **C. A.**—*Covenant for Quiet Enjoyment*—*Bursting of Water-pipe*—*House Let in Flats*.—Where a landlord lets a house in flats, and the different tenants pay their proportions of the water rate for the supply of the house, the landlord is not, under the covenant for quiet enjoyment, liable for damage caused to any tenant by the bursting of the water-pipe, in the absence of want of reasonable care and skill in fitting up and maintaining the pipes.—*Anderson v. Oppenheimer*, L.R. 5 Q.B.D. 602; 49 L.J. Q.B. 708.
- (ix.) **C. A.**—*Covenant to Pay Rates and Taxes*—*Abating Nuisance*—38 & 39 Vict., c. 55, s. 104.—Decision of C.P. Div. (see *Landlord and Tenant* v., p. 20) affirmed.—*Budd v. Marshall*, L.R. 5 C.P.D. 481; 50 L.J. C.P. 24; 29 W.R. 148.
- (x.) **C. P. Div.**—*Covenant to Repair*—*Fall of Premises*—*Liability for Rent and Damages*.—Plaintiffs let to defendant a warehouse on the terms that

defendant was to keep the inside in good repair and deliver up at the end of the term, damage by fire, storm, or tempest, or other inevitable accident, and reasonable wear and tear excepted; plaintiffs to keep the roof, walls, and main timbers in good repair, the rent to be suspended in case of destruction by fire, storm, or tempest. Sub-lessees of defendant overloaded a floor with flour and in consequence the whole building fell: *Held* that defendant was liable for rent during the re-building by the plaintiffs, and for damages only to the extent of the cost of restoring the inside of the premises.—*Manchester Bonded Warehouse Co. v. Carr*, L.R. 5 C.P.D. 507; 49 L.J. C.P. 809; 43 L.T. 476.

- (xi.) **C. J. B.**—*Fixtures—Signboard of Inn.*—There is no legal presumption that the signboard of an inn is a landlord's fixture or attached to the freehold.—*Ex parte Sheen, Re Thomas*, 43 L.T. 638; 29 W.R. 248.
- (xii.) **Ch. Div. V. C. H.**—*Lease—Covenant not to Assign without Consent.*—A lease contained a covenant by the lessee not to assign without lessor's previous consent in writing, but such consent not to be unreasonably withheld: *Held* that the proviso did not constitute a covenant by the lessor, but a qualification upon the lessee's covenant.—*Sear v. House Property and Investment Co.*, 50 L.J. Ch. 77; 43 L.T. 531; 29 W.R. 192.
- (xiii.) **C. A.**—*Lease—Distress by Mortgagee of Reversion—Verbal Collateral Agreement.*—A mortgagee of premises, which had been let on a lease, gave notice to the lessee of his mortgage, and that interest thereon was in arrear, and directed the lessee to pay him the rent. The lessee then set up an alleged verbal agreement collateral to the lease with the mortgagor, that rent should not be paid till the landlord had executed certain repairs. The mortgagee distrained for rent, and the lessee sought to obtain an injunction to restrain him from holding or selling the goods distrained, and specific performance of the collateral agreement: *Held* that the injunction could not be granted, as the mortgagee was not bound by the collateral agreement.—*Carter v. Salmon*, 43 L.T. 490.

Lands Clauses Act:—

- (v.) **C. A.**—*Compensation—Inquisition—Certiorari—Delay.*—On an application for a certiorari to quash an inquisition before the sheriff as to the amount of compensation payable to a claimant under the Lands Clauses Act, on the ground of an improper mode of assessment having been adopted by the jury, the Court refused to grant the writ, as the applicant had allowed five months to expire without making any objection.—*Regina v. Sheward*, 49 L.J. Q.B. 716.
- (vi.) **Ch. Div. F. J.**—*Compulsory Sale—Failure to make Title—Payment into Court.*—Plaintiffs contracted to sell land to defendants, but failed to make any title to a small part of the land. Defendants paid the purchase-money into Court, having first deducted certain sums in respect of accommodation works in accordance with the contract, and executed a deed-poll under sec. 77 of Lands Clauses Act, 1845, purporting to vest the land in themselves: *Held* that plaintiffs were not owners of the strip of land within secs. 76 and 77, and that defendants could not acquire a title to the land under those sections.—*Wells v. Chelmsford Local Board*, L.R. 5 Ch. D. 108; 49 L.J. Ch. 827; 43 L.T. 378.

Limitations, Statutes of:—

- (iii.) **Q. B. Div.**—*Action for Penalty—Counterfeit Hall Marks—Party Grieved—7 & 8 Vict., c. 22; 3 & 4 Will. IV., c. 42, s. 8.*—In an action for penalties brought by the Goldsmiths' Company under sec. 8 of 7 & 8 Vict., c. 22, against defendant for having sold silver wares having a counterfeit mark, defendant pleaded, 3 & 4 Will. IV., c. 42, s. 8, that

plaintiff was a party grieved within the Act, and could not sue after two years: *Held* a good plea.—*Robinson v. Curry*, L.R. 6 Q.B.D. 21; 50 L.J. Q.B. 9; 43 L.T. 504.

- (iv.) **Ch. Div. V. C. M.**—*Concealed Fraud—Intestacy*—3 & 4 Will. IV., c. 27, s. 26; 23 & 24 Vict., c. 38, s. 13.—Plaintiff brought an action to recover possession of real and personal estate which had belonged to M., who had died intestate eighty years ago, alleging that defendant's predecessor in title had, on M.'s death, fraudulently represented himself to be heir-at-law and next-of-kin of M., whereas plaintiff's predecessor in title was, in fact, M.'s heir-at-law and next-of-kin: *Held* that, as to the real estate, the alleged fraud might have been discovered with reasonable diligence, and therefore the claim was barred by the Statutes of Limitation, and, as to the personal estate, it was barred by 23 & 24 Vict., c. 38, s. 13.—*Willis v. Earl Howe*, 50 L.J. Ch. 4; 43 L.T. 375; 29 W.R. 70.

Lord Mayor's Court:—

- (i.) **C. A.**—*Foreign Attachment—Plea of Custom*.—The allegations in a plea of the custom of foreign attachment that the serjeant-at-arms had summoned defendant and certified that he had nothing within the city and cannot be found there, and that defendant had been called at four courts and made default, are material and must be proved.—*London Joint-Stock Bank v. Mayor of London*, L.R. 5 C.P.D. 494.

Lunacy:—

- (ii.) **C. A.**—*Sale of Lunatic's Property—Reservation of Minerals*—16 & 17 Vict., c. 70, s. 124.—The Court has power to make an exchange of the land of a lunatic without the minerals under it.—*Re Dicconson*, L.R. 15 Ch. D. 816; 29 W.R. 222.

Master and Servant:—

- (i.) **C. A.**—*Wages—Forfeiture for Leaving without Notice—Weekly Hiring*—38 & 39 Vict., c. 90, s. 11.—Plaintiff, a work-woman in a factory, was paid by the piece, the amount of work done being booked each Wednesday and paid on the following Saturday; and the rules of the factory provided that any operative leaving without giving a fortnight's notice should forfeit all wages then due. Plaintiff left on a Wednesday without giving notice, and applied on the Saturday for the price of her work done up to Wednesday. The employer claimed to retain this under the rules: *Held* that the hiring of plaintiff was not a weekly hiring, and that she was protected from the forfeiture by sec. 11 of Employers and Workmens Act, 1875.—*Warburton v. Hayworth*, L.R. 6 Q.B.D. 1; 43 L.T. 461; 29 W.R. 81.
- (ii.) **C. P. Div.**—*Workman—Sub-Contract*—38 & 39 Vict., c. 90, ss. 3, 10.—Appellant was employed by respondents as a potter's printer, and by the trade custom it was his duty to find a person called a transferer to assist him. The transferers struck, and appellant's work was rendered useless: *Held* that, though he was willing to work, he was properly convicted of absenting himself from respondent's employment.—*Grainger v. Ayneley*, 43 L.T. 608; 29 W.R. 242.

Metropolitan Management:—

- (iii.) **Q. B. Div.**—*Dangerous Structure—Party Wall—Adjoining Owner*—18 & 19 Vict., c. 122, s. 73.—The appellant pulled down his house, except two party walls, which separated it from the adjoining houses; and the Metropolitan Board of Works served notices on him and the adjoining owners to take down, or make secure the party walls, and on their default, the Board did the necessary work, and summoned appellant for the

amount of the expenses: *Held* that the magistrate rightly made an order under sec. 73 of Metropolitan Building Act, 1855, for the whole amount against appellant.—*Debenham v. Metropolitan Board of Works*, 43 L.T. 596.

- (ir.) **C. A.**—*Erection of Urinal—Nuisance*—18 & 19 Vict., c. 120, s. 88.—Section 88 of Metropolis Management Act, 1855, does not authorize a vestry to erect a urinal, where it will be a nuisance to neighbouring householders.—*Vernon v. Vestry of St. James'*, 29 W.R. 222.

Mortgage:—

- (xi.) **C. A.**—*Attornment Clause—Bankruptcy—Fixtures—Second Mortgage—Goodwill of Public-House*.—Though a mortgage contains an attornment clause, tenants fixtures placed on the premises after the date of the mortgage, pass to the mortgagee as against the mortgagor's trustee in liquidation. An attornment clause in a second mortgage is valid, though the first mortgage contain an attornment clause. The goodwill of a mortgaged public-house belongs to the mortgagor's trustee in liquidation as against the mortgagee.—*Ex parte Punnett, Re Kitchen*, 29 W.R. 129.
- (xii.) **C. A.**—*Attornment Clause—Landlord and Tenant—Bankruptcy—Distress*.—A mortgage deed, under which mortgagor attorned tenant from year to year to the mortgagee at a rent payable quarterly, contained a proviso enabling the mortgagee at any time after a certain date to enter and determine the tenancy without notice. The mortgagor having filed a liquidation petition, and a receiver having been appointed the mortgagee distrained for two quarters' rent in arrear: *Held* that the distress was good.—*Ex parte Queen's Benefit Building Society, Re Trelfall*, 29 W.R. 128.
- (xiii.) **C. A.**—*Contemporaneous Mortgages—One Debt—Debt borne Rateably*.—Decision of V.O.H. (see *Mortgage v.*, p. 23) affirmed.—*Athill v. Athill*, 43 L.T. 581.
- (xiv.) **Ch. Div. V. C. H.**—*Contemporaneous Mortgages—One Debt—Debt borne Rateably*.—E. mortgaged policies of assurance to secure repayment of a sum of money, and at the same time deposited title deeds of certain lands with the mortgagee, and gave a memorandum stating that the deeds were deposited as collateral security for the repayment of the same sum. He died intestate: *Held* that the debt was payable rateably out of the insurance moneys and the land.—*Early v. Early*, 49 L.J. Ch. 826 n.
- (xv.) **Ch. Div. F. J.**—*Foreclosure—Personal Order Against Mortgagor*.—An equitable mortgagee is entitled to obtain a personal order against a defaulting mortgagor as well as a foreclosure decree.—*Greenough v. Littler*, L.R. 15 Ch. D. 93.
- (xvi.) **Ch. Div. M. R.**—*Proviso for Reducing Rate of Interest—Mortgagee in Possession*.—When a mortgage deed contains a covenant for payment of interest with a proviso for reducing the rate on punctual payment, a mortgagee in possession is entitled, on taking accounts, to be credited with the higher rate.—*Union Bank of London v. Ingram*, L.R. 16 Ch. D. 53; 50 L.J. Ch. 74; 29 W.R. 209.

Municipal Law:—

- (iv.) **Ch. Div. M. R.**—*Alderman—Disqualification—Arrangement with Creditors*—5 & 6 Will. IV., c. 76, s. 52; 32 & 33 Vict., c. 62, s. 21.—*Held* that an alderman who had made a private arrangement with his creditors, under which they accepted a composition on their debts, had not become disqualified under sec. 52 of Municipal Corporations Act, 1835, or sec. 21 of Debtors Act, 1869; and that the Chancery Division

had jurisdiction to restrain by injunction persons threatening to remove him from office.—*Aslatt v. Southampton Corporation*, 50 L.J. Ch. 31; 43 L.T. 464; 29 W.R. 117.

- (v.) **C. A.**—*Conveyance of Prisoners to Prison*—40 & 41 Vict., c. 21, ss. 4, 57.—The Prisons Act, 1877, transfers the liability for the expenses of conveying to prison a prisoner committed by justice summarily or for trial, from the county treasurer to the Secretary of State.—*Mullins v. Treasurer of Surrey*, 29 W.R. 179.
- (vi.) **Ex. Div.**—*Local Authority—Bye-Law—Construction*.—A bye-law of an urban sanitary authority, provided that every person who laid out a new street should comply with certain requirements as to its width: Held that a person who, in accordance with a contract with a building owner, built along a line of street already laid out by the owner, was not a person who laid out a new street within the bye-law.—*Sunderland Corporation v. Brown*, 43 L.T. 478.
- (vii.) **C. A.**—*Maintenance of Insane Prisoners*—3 & 4 Vict., c. 54, s. 2; 40 & 41 Vict., c. 21.—The liability for the maintenance of insane prisoners, which by 3 & 4 Vict., c. 54, s. 2, is imposed upon the county in default of any ascertained place of settlement, is not transferred to the Consolidated Fund by the Prisons Act, 1877.—*Regina v. Mews*, L.R. 6 Q.B.D. 47; 43 L.T. 403; 29 W.R. 66; *Regina v. Oastler*, 50 L.J. M.C. 4.
- (viii.) **C. A.**—*Vestry Meeting—Summoning Authority*.—The vicar and churchwardens of a parish have power to fix the hour of holding vestry meetings, and the parishioners cannot, by mandamus, compel them to alter it.—*Regina v. Vicar of Tottenham*, 49 L.J. Q.B. 870; *Regina v. Wilson*, 43 L.T. 560.

Partition:—

- (iv.) **Ch. Div. V. C. B.**—*Sale—Time for Sale fixed by Will*—31 & 32 Vict., c. 40.—Testator devised real estate to trustees upon trust for A. and B. equally for life, and after the death of either his share for his children, with a direction to sell and divide upon the death of survivor of A. and B. A. having died, his children asked for a sale: Held that a sale could not be ordered in the lifetime of B.—*Swaine v. Denby*, 49 L.J. Ch. 734.
- (v.) **C. A.**—*Trust to Work Quarries*.—Partition at the suit of the equitable tenant for life of real and leasehold property held on trust, with power for the trustees to work quarries, refused.—*Taylor v. Grange*, L.R. 15 Ch. D. 165; 49 L.J. Ch. 794; 43 L.T. 233.

Patent:—

- (i.) **Ch. Div. M. R.**—*Allegation of Infringement—Slander of Title—Injunction*.—A patentee who issues notices against purchasing from a vendor, alleging infringements of his patent, is not bound to take legal proceedings to prevent the alleged infringements, and if he issues his notice *bonâ fide*, he is not liable to an action by the vendor for injury caused thereby, though he may be restrained by injunction from continuing to issue the notice.—*Halsey v. Brotherhood*, L.R. 15 Ch. D. 514; 49 L.J. Ch. 786; 43 L.T. 366; 29 W.R. 9.
- (ii.) **Ch. Div. V. C. B.**—*Infringement—Injunction against Agent*.—Plaintiffs were patentees of an invention, an element of which was the rendering of nitro-glycerine less liable to explode, so that it could be transported with safety: Held that the trans-shipping in an English port of a preparation of nitro-glycerine manufactured abroad by a similar process was an infringement, and injunction granted restraining defendants from acting as Custom House agents so as to enable the foreign owner

of this preparation to pass it through the English Customs.—*Nobel's Explosives Co. v. Jones, Scott, & Co.*, 49 L.J. Ch. 726.

Poor Law:—

- (iii.) **Q. B. Div.**—*Rate—Appeal—Time*—17 Geo. II., c. 38., s. 4; 12 & 13 Vict., c. 45, s. 1.—Where a rate was published on the 21st of March, and the next Quarter Sessions were held on the 6th of April: *Held* that appellant was not bound to appeal to these sessions, but might appeal to the next following sessions.—*Regina v. Surrey Justices*, 50 L.J. M.C. 10; 43 L.T. 500.
- (iv.) **Q. B. Div.**—*Rate—Occupation—Sale of Pasturage*.—The owner of certain lands on the 7th May, 1879, sold the grass thereon in lots, under conditions that each lot was sold from the day of sale to the 21st of March, 1880, to be fed by different kinds of stock; the seller to pay all rates and taxes: *Held* that the owner was the occupier of the lands, notwithstanding the sale, and rateable in respect of them.—*Mogg v. Yatton Overseers*, L.R. 6 Q.B.D. 10; 29 W.R. 74.
- (v.) **Q. B. Div.**—*Rate—Woodlands—Right of Sporting—Valuation*—37 & 38 Vict., c. 54, s. 4 (a).—In estimating the value of land used as a plantation or wood, the value of the right of sporting over the land may be taken into account.—*Eyton v. Mold Overseers*, L.R. 6 Q.B.D. 13; 43 L.T. 472; 29 W.R. 122.
- (vi.) **Q. B. Div.**—*Settlement—Order of Removal—Appeal—Evidence*—39 & 40 Vict., c. 61, s. 34.—An appeal was made to Quarter Sessions from an order by justices for the removal of a pauper to M., by reason of a settlement required under sec. 34 of the Divided Parishes Act, 1876; the appeal being on several grounds, including the objection that no corroboration of the pauper's evidence was given before the justices; *Held* that it was competent for the sessions to receive such corroborative evidence, though not tendered before the justices making the order appealed from.—*Regina v. Abergavenny Justices*, L.R. 6 Q.B.D. 31; 50 L.J. M.C. 1; 43 L.T. 602.

Power of Appointment:—

- (ii.) **C. A.**—*Testamentary Appointment to Trustee—Real Estate—Failure of Trust—Resulting Trust*.—Testatrix having a general testamentary power of appointment over real estate subject to a gift over on default of appointment, devised the property to trustees upon trust for A., who died in her lifetime: *Held*, reversing the decision of V.C.M. (49 L.J. Ch. 705), that the property vested in the trustees subject to a resulting trust for testatrix's heir-at-law.—*Spirling v. Rochefort*, L.R. 16 Ch. D. 18; 50 L.J. Ch. 1; 29 W.R. 84.
- (iii.) **Ch. Div. V. C. M.**—*Void Limitation on default of Appointment—Subsequent Re-settlement*.—Testator bequeathed residuary estate to his children in equal shares, and directed that a part of each son's share should be set apart in trust for the son until bankruptcy, and then for such of his children as he should appoint, and in default of appointment for such children as should attain twenty-five: *Held* that there was an intestacy in default of appointment as to the moneys subject to this trust. All the testator's children executed a settlement reciting the will, and declaring that the son's shares should be held on the trusts of the will: *Held* that the gift over on default of appointment was rendered effectual by the settlement.—*Miley v. Cape*, 43 L.T. 236.

Practice:—

- (xlix.) **C. P. Div.**—*Acknowledgment by Married Woman—Colony*—3 & 4 Will. IV., c. 74; 15 & 16 Vict., c. 86, s. 22.—The acknowledgment of a

disentailing deed by a married woman taken in a colony, can, by virtue of sec. 22 of 15 & 16 Vict., c. 86, be taken before any person authorized to administer oaths in the colony.—*Re Smith*, 50 L.J. C.P. 32; 43 L.T. 438.

- (i.) **C. A.**—*Action against Foreign State—Jurisdiction.*—A foreign sovereign or state cannot be served with a writ or other process of our courts except where the claim is in the nature of a cross-action to one by the sovereign or state, or where the plaintiff and the sovereign or state have claims upon funds in the hands of third persons within the jurisdiction of our courts.—*Strousberg v. Republic of Costa Rica*, 29 W.R. 125.
- (ii.) **C. A.**—*Action against Foreign Subject—Litigation in Foreign Court—Power to Restrain.*—When a foreign subject has appeared in an English court, he gives jurisdiction to that court to restrain him from proceeding to litigate the same subject-matter in the courts of his own country, but it is a matter of discretion, and the court ought only to exercise this jurisdiction to prevent double vexation.—*Dawkins v. Simonetti*, 29 W.R. 228.
- (iii.) **C. P. Div.**—*Appeal—Enlarging Time—Ord. 57, r. 6.*—The Court will, in a proper case, enlarge the time limited for appealing after the expiration of the time so limited, though the omission to appeal within the limited time was not induced by the conduct of the opposite party, nor due to inevitable accident.—*Carter v. Stubbs*, 50 L.J. C.P. 4; 29 W.R. 132.
- (liii.) **C. A.**—*Appeal—Leave to Person not Party to Appeal.*—Leave to a person not a party to an action to appeal from an order may be obtained by *ex parte* application to the Court of Appeal.—*Markham v. Markham*, L.R. 6 Ch. D. 1; 29 W.R. 228.
- (liv.) **C. A.**—*Appeal—Security for Costs—Delay in Applying for.*—An application for security for costs of an appeal will be refused unless made promptly before costs of the appeal have already been incurred.—*Mayor of Saltash v. Goodman*, 43 L.T. 464.
- (lv.) **Ch. Div. F. J.**—*Appeal—Staying Proceedings pending—Inquiries.*—Inquiries having been directed as to the amount to be paid to a plaintiff who had succeeded in an action for specific performance and damages, the Court refused to stay proceedings pending an appeal.—*Hyam v. Terry*, 29 W.R. 32.
- (lvi.) **C. A.**—*Appeal—Time—Refusal to make Order.*—An order containing a declaration as to the rights of parties, no further order being made, is not a simple refusal to make an order so as to limit the time for appealing therefrom to twenty-one days.—*Re Clay and Tetley*, 43 L.T. 402; 29 W.R. 5.
- (lvii.) **C. A.**—*Compromise—Infants.*—The Court has no power to compromise a claim in which infants are interested against the wish of their next friend or guardian *ad litem* acting under the advice of counsel.—*Wilson v. Birchall*, L.R. 16 Ch. D. 41; 29 W.R. 27.
- (lviii.) **Ch. Div. M. R.**—*Contempt—Attachment—Motion to Commit.*—When an order has been made upon notice of motion for an attachment, the Court will not afterwards, on an *ex parte* application, alter the order to one of committal.—*Buist v. Bridge*, 43 L.T. 432; 29 W.R. 117.
- (lix.) **C. A.**—*Contempt—Attachment—Extradition Act, 1870, s. 19.*—A party to an action in the Chancery Division was arrested in Paris for a crime under the Extradition Act, 1870, and while in prison in England under the warrant, was served with an attachment for disobedience to an order in the action: *Held* that the attachment was valid, and that the prisoner was not entitled to his discharge till he had cleared his contempt, though

he had been acquitted on the criminal charge.—*Pooley v. Whetham*, L.R. 25 Ch. D. 435; 43 L.T. 267.

- (lx.) **Ch. Div. V. C. M.**—*Contempt—Breach of Undertaking—Publication of Interlocutory Proceedings.*—On a motion for an injunction defendant undertook not to publish a certain advertisement likely to injure plaintiff's business until the trial. He published in a newspaper a notice of the hearing of the motion and of his undertaking which virtually repeated the advertisement: *Held* that he had not committed a contempt of Court.—*Buenos Ayres Gas Co. v. Wilde*, 29 W.R. 43.
- (lxi.) **Ch. Div. V. C. M.**—*Costs—Administration Action—Apportionment.*—Under a power of appointment in a marriage settlement the shares of children were appointed unequally, but were nearly equalised by a division of the unappointed property under a hotch-pot clause: *Held* that the costs of an action to administer the trusts of the settlement must be paid rateably out of the appointed and unappointed shares.—*Moore v. Dixon*, L.R. 15 Ch. D. 566; 49 L.J. Ch. 807; 29 W.R. 12.
- (lxii.) **Q. B. Div.**—*Costs—Admiralty Action—County Court—31 & 32 Vict., c. 71, s. 9—Ord. 55.*—Section 9 of County Courts Admiralty Jurisdiction Act, 1868, is repealed by Order 55.—*Tenant v. Ellis*, L.R. 6 Q.B.D. 46; 43 L.T. 506; 29 W.R. 121.
- (lxiii.) **C. A.**—*Costs—Collision.*—Cargo owners, whose cargo had been lost through a collision, brought an action against the vessel which had come into collision with the vessel carrying their cargo, and both vessels were found to blame: *Held* that no costs ought to be given.—*The City of Manchester*, L.R. 5 P.D. 221; 49 L.J. P.D.A. 81.
- (lxiv.) **Ch. Div. F. J.**—*Costs—Inquiry as to Damages.*—Where in an action for damages, judgment was given for plaintiff with costs, and an inquiry as to damages directed, the costs of the inquiry were reserved in order that the Court might exercise control over the manner in which it was conducted.—*Slack v. Midland Rail. Co.*, L.R. 16 Ch. D. 81; 43 L.T. 434.
- (lxv.) **C. A.**—*Costs—Set-off.*—Judgment having gone by default against J. and H., and the sheriff having taken J.'s goods in execution, H. got the judgment against him set aside with costs; and in an interpleader issue claimed the goods seized, but was decided against with costs: *Held* that the costs in the interpleader could not be set-off against the costs of the action.—*Barker v. Hemming*, L.R. 5 Q.B.D. 609; 49 L.J. Q.B. 730.
- (lxvi.) **C. A.**—*Costs—Taxation—Counter-Claim.*—A claim and counter-claim having both been dismissed with costs: *Held* that plaintiff must pay the general costs of the action, and defendant only those costs incurred on account of the counter-claim.—*Mason v. Brentini*, L.R. 15 Ch. D. 287; 43 L.T. 557; 29 W.R. 126.
- (lxvii.) **Ex. Div.**—*Costs—Taxation—Counter-claim.*—Plaintiff claimed commission from defendants, who set up a counter-claim for a specific sum for goods sold, and plaintiff, by his reply, admitted his indebtedness for their amount. At the trial the jury found defendants were indebted to plaintiff for a sum less than the amount of the counter-claim, and judgment was entered for plaintiff on claim and defendants on counter-claim: *Held* that in taxing the costs, defendants were entitled to the costs of the cause.—*Baines v. Bromley*, 29 W.R. 245.
- (lxviii.) **C. A.**—*Costs—Trial by Jury—Discretion of Judge—Ord. 55.*—In exercising his discretion to deprive a successful party of his costs under Ord. 55, a judge may take into consideration the conduct of the party previous to and conducing to the action, as well as in the course of litigation.—*Harnett v. Vise*, L.R. 5 Ex. D. 307; 29 W.R. 7.

- (lxi.) **Ch. Div. M. R.**—*Counter-Claim—Trial of Issues—Ord. 36, r. 6.*—Where defendant counter-claims instead of bringing a new action, he is not entitled to have the issue on his counter-claim tried before the other issues in the action.—*Piercy v. Young*, L.R. 15 Ch. D. 475.
- (lxx.) **Ch. Div. M. R.**—*Discontinuance—Counter-Claim.*—Where plaintiff discontinues an action in which a counter-claim has been delivered, defendant cannot proceed with the counter-claim.—*Vavasour v. Krupp*, L.R. 15 Ch. D. 474.
- (lxxi.) **C. A.**—*Discovery—Interrogatories.*—Decision of V.C.B. (see *Practice* xxvi., p. 28) affirmed.—*Benbow v. Low*, 50 L.J. Ch. 85.
- (lxxii.) **P. D. A. Div.**—*Discovery—Interrogatories—Admiralty Action—Collision.*—Interrogatories may be delivered in an action for damage by collision, asking for information relative to the collision.—*The Radnorshire*, L.R. 5 P.D. 172; 43 L.T. 319.
- (lxxiii.) **C. A.**—*Discovery—Interrogatories—Co-defendants—Ord. 31, r. 1.*—M. brought an action against K., who counter-claimed against M. and N : Held that N. had no right to interrogate M.—*Molloy v. Kilby*, L.R. 15 Ch. D. 162; 29 W.R. 127.
- (lxxiv.) **Ch. Div. V. C. M.**—*Discovery—Interrogatories—Winding-up of Company—Ord. 31, r. 1.*—In the winding-up of a company, the official liquidator will be allowed to deliver interrogatories to a person claiming to prove, who has made an affidavit of documents.—*Re Alexandra Pulace Co.*, L.R. 16 Ch. D. 58; 50 L.J. Ch. 7; 43 L.T. 406; 29 W.R. 70.
- (lxxv.) **Ch. Div. M. R.**—*Discovery—Production of Documents.*—In an action claiming an account of profits made by defendants as agents for plaintiffs, where defendants denied the agency, the Court declined to order production of invoices of goods sold by third parties to defendants, and re-sold by them to plaintiffs, until after trial of the question of agency.—*Verminck v. Edwards*, 29 W.R. 189.
- (lxxvi.) **Ch. Div. V. C. B.**—*Evidence—Affidavits in Reply—Ord. 38, r. 3.*—The Court has no power to order plaintiff's affidavits in reply to be taken off the file if not confined strictly to matters in reply, but will disregard them at the trial. The Court can, at the trial, give defendant leave to answer such affidavits.—*Gilbert v. Comedy Opera Co.*, 29 W.R. 169.
- (lxxvii.) **C. A.**—*Evidence—Attachment of Debt—Examination of Debtor—Ord. 45, r. 1.*—In the oral examination of a judgment debtor, as to whether any and what debts are owing to him, any question fairly pertinent and properly asked, with a view to ascertain full particulars of such debts, must be answered. Decision of V.C.M. (49 L.J. Ch. 701) affirmed.—*Republic of Costa Rica v. Strousberg*, L.R. 16 Ch. D. 8; 50 L.J. Ch. 7; 43 L.T. 399; 29 W.R. 179.
- (lxxviii.) **C. A.**—*Evidence—Examination ex parte—Ord. 37, rr. 1, 4.*—After consenting that evidence in an action should be taken by affidavit, a solicitor for one party was unable to get his witnesses to make affidavits: Held that the Court had no jurisdiction to allow him to examine witnesses *ex parte* before a special examiner, and to use the depositions on the trial, subject to cross-examination of the witnesses.—*Warner v. Mosses*, 50 L.J. Ch. 28; 43 L.T. 401; 29 W.R. 201.
- (lxxix.) **C. A.**—*Evidence—Experts—Nautical Assessors.*—Where the Court is assisted by nautical assessors, evidence of experts on questions of nautical science may properly be rejected.—*The Sir Robert Peel*, 43 L.T. 864.
- (lxxx.) **Ch. Div. V. C. M.**—*Evidence—Scientific Witnesses.*—A judge may, at any period in a case, allow further evidence to be called by either party for his own satisfaction.—*Budd v. Davidson*, 29 W.R. 192.

- (lxxx.) **C. A.**—*Judgment Debtor—Elegit—Equity of Redemption—Receiver—Judicature Act, 1879, s. 25 (8).*—A judgment creditor who has sued out an *elegit* against his debtor, whose only property is an equity of redemption, is entitled to the appointment of a receiver, on motion after judgment in the division in which he has obtained judgment.—*Smith v. Cowell*, L.R. 6 Q.B.D. 75; 50 L.J. Q.B. 38; 43 L.T. 528; 29 W.R. 227.
- (lxxxii.) **Ch. Div. M. R.**—*Leave for Short Notice of Motion—Vacation—Ord. 53, r. 8.*—Leave to serve short notice of motion cannot be given by the Chief Clerk in Vacation.—*Conacher v. Conacher*, 29 W.R. 230.
- (lxxxiii.) **C. A.**—*Married Woman—Leave to sue Alone—Ord. 16, r. 8.*—A married woman having brought an action in her own name, defendant took out a summons to stay proceedings unless she joined her next friend or gave security for costs: *Held* that the dismissal of the summons amounted to giving plaintiff leave to sue alone, and that the Court could give such leave after action brought.—*Kingsman v. Kingsman*, 29 W.R. 207.
- (lxxxiv.) **Ch. Div. M. R.**—*Motions—Priority—Motion to Discharge Prisoner.*—A motion to discharge a prisoner from custody has priority over all other motions.—*Ashton v. Shorrocks*, 43 L.T. 530; 29 W.R. 117.
- (lxxxv.) **Q. B. Div.**—*New Trial—Trial by Jury—Time for Applying—Ord. 39, r. 1a.*—Where an action has been tried by jury in London or Westminster, if no divisional court to which an application for a new trial may be made sit on the last of the four days after the trial, the application is in time if made at the first subsequent sitting.—*Grant v. Holland*, 49 L.J. Q.B. 800; 29 W.R. 32.
- (lxxxvi.) **Ch. Div. M. R.**—*Next Friend of Married Woman—Acting as Solicitor.*—A writ issued by the next friend of a married woman on her behalf without the employment of a solicitor will be set aside with costs against the next friend.—*Swann v. Swann*, 43 L.T. 530.
- (lxxxvii.) **Div. Ct.**—*Notice of Trial—Time—Ord. 36, r. 3.*—A plaintiff is entitled to give notice of trial with his reply, though the reply may not formally close the pleadings.—*Asquith v. Molineux*, 49 L.J. Q.B. 800.
- (lxxxviii.) **Ch. Div. V. C. B.**—*Order to attend Proceedings—No Authority from Client—Discharge.*—An order to attend proceedings, obtained by a solicitor without the written authority of his client, will be discharged on the client's application.—*Bird v. Harris*, 43 L.T. 434; 29 W.R. 45.
- (lxxxix.) **C. A.**—*Particulars—Account.*—In an action in which plaintiff claimed to be repaid out of a certain fund sums advanced by him to C., in a joint transaction with defendant who had advanced other sums, defendant, before putting in a defence, applied for an account of the amount alleged to have been advanced, with dates and particulars: *Held* that defendant could not require the particulars applied for before putting in his defence.—*Augustinus v. Nerinck*, L.R. 16 Ch. D. 13; 43 L.T. 458; 29 W.R. 225.
- (xc.) **Ch. Div. V. C. H.**—*Parties—Change by Death—Application by Successor of Deceased Defendant—Ord. 50.*—Where an action has abated against a defendant before judgment, and plaintiff has not made his successors in interest parties to the action, defendant's successors should apply for an order against plaintiff that he obtain an order to prosecute the proceedings against them within a limited time, or that in default the action may be dismissed as against them, without costs.—*Motion v. King*, 29 W.R. 78.
- (xci.) **Ch. Div. V. C. M.**—*Parties—Patent—Co-owners—Ord. 16, r. 13, 14.*—One of several co-owners of a patent can sue for an injunction and an account. An objection by a defendant for want of parties cannot

be taken at the hearing, though mentioned in the defence, but the proper course is to move that the other persons should be added as parties.—*Sheehan v. G. E. Rail. Co.*, L.R. 16 Ch. D. 59; 50 L.J. Ch. 68; 43 L.T. 432; 29 W.R. 69.

- (xcii.) **C. A.**—*Parties—Third party Notice—Ord. 16, rr. 17, 18, 20, 21.*—In an action by a company against its directors and others seeking to make defendants liable in respect of dividends improperly paid out of capital, defendants applied for leave to serve third party notices, on all the shareholders on the ground that they would have a right to recover the sums received by the shareholders as dividends: *Held* that the Court, in the exercise of its discretion, ought to refuse the application. An application by defendant for leave to serve a third party notice ought to be made on notice to plaintiff.—*Wye Valley Rail. Co. v. Hawes*, 50 L.J. Ch. 75; 29 W.R. 120, 177.
- (xciii.) **Ch. Div. M. R.**—*Petition Presented without Authority—Amendment of Order.*—A petition for appointment of new trustees, and a vesting order, was presented in the names of several co-petitioners, and an order made. More than a year afterwards, an application was made by some of the persons joined as co-petitioners, to have the order rescinded, on the ground that the petition was not authorised by them: *Held* that the order could not be rescinded, but should be amended by striking out their names as co-petitioners.—*Re Savage*, L.R. 15 Ch. D. 557.
- (xciv.) **C. A.**—*Pleading—Allegations in Aggravation of Damages—Ord. 19, r. 4.*—Every fact of which evidence may be given at the trial is material, and may be pleaded.—*Millington v. Loring*, 29 W.R. 207.
- (xcv.) **Ch. Div. F. J.**—*Pleading—Amendment—Ord. 27, r. 1.*—In an action to restrain defendant from committing certain acts upon a foreshore forming part of a settled estate, defendant pleaded that he had acquired an easement by prescription, and denied that plaintiff was entitled to the foreshore, "save subject to defendant's rights:" *Held* that defendant could not amend at the hearing, so as to raise the question of plaintiff's ownership, by striking out the words in inverted commas.—*Laird v. Briggs*, 43 L.T. 632; 29 W.R. 197.
- (xcvi.) **Ch. Div. V. C. B.**—*Pleading—Issue between Co-Defendants—Notice—Ord. 16, r. 17.*—In an action by A. against his trustees B. and C. for breach of trust, B. claimed in his defence contribution from C., and delivered his defence to C.: *Held* that C. had sufficient notice of B.'s claim for indemnity.—*Butler v. Butler*, 49 L.J. Ch. 742.
- (xcvii.) **C. A.**—*Pleading—Payment into Court—Ord. 30, r. 1.*—When plaintiff claims for distinct pieces of work and labour alleged in separate paragraphs of his statement, defendant on paying money into Court, need not specify in his defence how much is paid in respect of each head of claim.—*Paraire v. Loibl*, 43 L.T. 427.
- (xcviii.) **C. A.**—*Pleading—Substitution of Plaintiff—Title of Action.*—Leave having been obtained by C. to carry on an action begun by A. against B. in which the statement of claim had been delivered, in like manner as the same might have been carried on by plaintiff, if he had not assigned his interest (see *Practice* xii., p. 36): *Held*, reversing the decision of V.C.B. (43 L.T. 466; 29 W.R. 45), that the statement of claim ought to be amended by adding a new title to the action with C. as plaintiff, and by showing the devolution of title.—*Sear v. Lawson*, 29 W.R. 109.
- (xcix.) **Ch. Div. F. J.**—*Transfer of Action—Further Proceeding—Charging Order—Ord. 51, r. 1a.*—A petition being presented by a solicitor for a charging order on moneys, the subject of an action transferred to Fry, J.

for hearing, his lordship ordered the petition to be heard by himself as a further proceeding in the action.—*Porter v. West*, 43 L.T. 569; 29 W.R. 236.

- (o.) **C. A.**—*Transfer of Stock—Vesting Order—Power to make in Chambers*—18 & 19 Vict., c. 134, s. 16.—An order vesting the right to transfer stock will not be made in Chambers.—*Frodsham v. Frodsham*, L.R. 15 Ch. D. 317; 43 L.T. 558; 29 W.R. 165.
- (ci.) **C. A.**—*Trial—Jury—Interpleader Issue*—Ord. 1, r. 2; Ord. 36, rr. 2, 3.—An interpleader issue having been directed, it was drawn up for trial with a jury, and so tried. A new trial having been directed, plaintiff gave notice of trial before a judge alone, and defendant did not give any counter-notice, but objected at the trial to the jurisdiction of the judge to try the case without a jury: *Held* that the issue could not be tried by a judge without a jury.—*Hamlyn v. Betteley*, L.R. 6 Q.B.D. 68; 50 L.J. C.P. 1.

Principal and Agent:—

- (v.) **C. A.**—*Agent for Mortgagor—Bankruptcy of Principal—Transfer of Mortgage to Agent*.—In 1828, plaintiff mortgaged freeholds to B. and in 1832, being about to reside abroad, he gave a power of attorney to defendant to receive the rents and profits of all his property and thereon to pay incumbrances. In 1845, plaintiff became bankrupt, but his assignee did not interfere with the mortgaged property. In 1849, defendant took a transfer to himself of the mortgage, and in 1877 the bankruptcy was annulled: *Held* that on plaintiff's bankruptcy defendant ceased to be his agent, and did not become agent of the assignee, and that on the transfer of the mortgage he became a mortgagee in possession, and could plead the statute of limitations against plaintiff's claim to redeem.—*Markwick v. Hardingham*, L.R. 15 Ch. D. 339.

Principal and Surety:—

- (ii.) **C. A.**—*Guarantee—Death—Notice—Covenant for Benefit of Third Party*.—B. gave a guarantee to the Committee of Lloyd's on behalf of A. on his becoming an underwriter, whereby B. held himself responsible for all A.'s engagements "in that capacity." At this time Lloyd's was a voluntary association, managed by a committee; and in 1871 it was incorporated by Act of Parliament: *Held* that the guarantee was not determined by notice of the death of B., and that Lloyd's were in the position of trustees for all persons with whom A. had entered into engagements as an underwriter.—*Lloyd's v. Harper*, 43 L.T. 481.

Probate:—

- (ii.) **P. D. A. Div.**—*Codicil—Incorporation—Seem* a document containing the words "This is a third codicil to my will," is not incorporated in a codicil of subsequent date by the words "this is a fourth codicil to my will."—*Stockil v. Punshon*, L.R. 6 P.D. 9; 29 W.R. 214.
- (iii.) **P. D. A. Div.**—*Contingent Will*.—Deceased, being about to go to M., duly executed a will, which began, "Being about to leave this station for M., in case of my death on the way, know all men that this is a memorandum of my last will and testament." He reached M. in safety, but died nine months afterwards: *Held* that the will was not contingent, and should be admitted to probate.—*In the goods of Mayd*, 29 W.R. 214.
- (iv.) **P. D. A. Div.**—*Will of Persian Subject—Decree of Persian Court—Administration with Decree Annexed*.—A Persian domiciled in Persia having died possessed of property in England, administration with the decree annexed of the Persian Court having jurisdiction over wills and

matters of inheritance was granted to the duly appointed attorney of the person to whom the property in England was appointed by the Court, limited to the property specified in the decree.—*In the goods of Dost Ali Khan*, L.R. 6 P.D. 6; 49 L.J. P.D.A. 78; 29 W.R. 80.

Public Health:—

- (iv.) **Ex. Div.**—*Offensive Trade*—38 & 39 Vict., c. 55, s. 114.—A manufacturer who carries on an offensive trade and so causes a nuisance within the district of an urban sanitary authority may be convicted under sec. 114 of the Public Health Act, 1875, though the nuisance is injurious to sick persons only.—*Malton Local Board v. Malton Farmers' Manure Co.*, 49 L.J. M.C. 90.
- (v.) **C. A.**—*Paving Rate—Demand—Recovery before Justices*—11 & 12 Vict., c. 43, s. 11; 11 & 12 Vict., c. 63, s. 68.—A local board having served notices of demand for payment of an apportioned rate for sewerage and paving roads on an owner, failed to take proceedings before justices to enforce the demand within six months: *Held* that they could not afterwards be allowed to prove in the administration of the owner's estate for the amount of the rate.—*West v. Dowman*, 29 W.R. 6.
- (vi.) **C. A.**—*Paving Rate—Recovery of*—11 & 12 Vict., c. 43, s. 11; c. 63, ss. 69, 90; 21 & 22 Vict., c. 98, s. 62.—The limitation of time for taking summary proceedings before magistrates imposed by sec. 11 of 11 & 12 Vict., c. 43, does not apply to the enforcing of the charge created by sec. 62 of the Local Government Act, 1858; and the fact that a local board has resolved that expenses made a charge on the premises in respect of which the work was done, by that section, were private improvement expenses under sec. 90 of Public Health Act, 1848, and should be recovered by annual instalments, does not prevent the board from enforcing the charge on the land in respect of such instalments as are in arrear.—*Tottenham Local Board v. Rowell*, L.R. 15 Ch. D. 378; 43 L.T. 616; 29 W.R. 36.

Railway:—

- (ix.) **C. P. Div.**—*Carrier—Passengers' Luggage—Negligence*.—Plaintiff took a through ticket at S. on the G. W. railway to a station on the N. W. railway: *Held* that the latter company were bound to take proper care of plaintiff's luggage after it had been delivered into their charge, and were liable for damage to the luggage resulting from negligence.—*Hooper v. L. & N. W. Rail. Co.*, 43 L.T. 570; 29 W.R. 241.
- (x.) **Ex. Div.**—*Negligence—Level Crossing*.—A level crossing and foot-bridge crossed defendants' railway, and were used by persons employed at a neighbouring manufactory. Plaintiff, a boy employed at the manufactory, was injured by a train while crossing over the level crossing. It appeared that a servant of the company stationed near the bridge was in the habit of preventing the boys at the manufactory from crossing by the bridge, and making them use the level crossing: *Held* that there was evidence of negligence to go to the jury.—*Clarke v. Midland Rail. Co.*, 43 L.T. 381.
- (xi.) **Ex. Div.**—*Rolling Stock and Plant—Execution against*—30 & 31 Vict., c. 127, s. 4.—The restriction against taking in execution the rolling stock and plant of a railway company contained in sec. 4 of Railway Companies Act, 1867, applies, though the railway has been closed for traffic and it is doubtful whether it will ever be re-opened.—*Midland Wagon Co. v. Potteries and Shrewsbury Rail. Co.*, L.R. 6 Q.B.D. 36; 50 L.J. Ex. 6; 43 L.T. 511; 29 W.R. 78.

Scotland:—

- (vi.) **H. L.—Vendor and Purchaser—General Warrandice—Concealment—Misrepresentation.**—Articles of roup of lands stipulated that the purchaser was to take the property with all risks of error in the particulars. The particulars contained the statement, "The lands hold of the Crown." The conveyance contained a clause of warrandice in the usual general terms. Immediately before the sale, the agents of B. the disponee of the last superior, wrote to the vendor claiming the right of mid-superiority, but did not persevere with the claim. Afterwards D. renewed, and succeeded in establishing, his claim: *Held* that the vendor was not liable to the purchaser either for breach of warrandice or for misrepresentation.—*Brownlie v. Campbell*, L.R. 5 App. 925.

Settlement:—

- (ix.) **Ch. Div. V. C. H.—Marriage Settlement—After-acquired Property—Covenant to Settle—Wife's Separate Estate.**—A marriage settlement contained a covenant to settle after-acquired property of the wife except such as should previously be otherwise settled: *Held* not to include a fund coming to the wife under a bequest made to her after the marriage for her separate use.—*Kane v. Kane*, 50 L.J. Ch. 72; 29 W.R. 212.
- (x.) **Ch. Div. V. C. M.—Marriage Settlement—Limitation to Next-of-kin—Wife's debts.**—By a marriage settlement, the wife's property was settled on certain trusts, giving her a general power of appointment by will, in the event of her dying before her husband without children, and, in default of appointment, for her next-of-kin; but if she survived her husband and there were no children, then in trust for her absolutely. The wife had contracted debts, and there were no children, and no probability of there being any. On the application of the wife, the corpus of the trust fund was directed to be applied in payment of her debts.—*Paul v. Paul*, L.R. 15 Ch. D. 580; 50 L.J. Ch. 14; 43 L.T. 239.

Ship:—

- (xii.) **P. D. A. Div.—Bail for Safe Return—Dissentient Co-Owner.**—The minority in interest of co-owners are entitled to bail for safe return of the ship, as far as the value of their shares extend, if they object to the proposed employment of the ship; and the fact that the manager who arranged the employment was appointed with their acquiescence is no bar to their claim.—*The Talca*, L.R. 5 P.D. 169; 29 W.R. 128.
- (xiii.) **C. A.—Bill of Lading—Set of Three—Right of Indorsee—Warehouseman's Liability.**—The consignees of a cargo to arrive in London indorsed and delivered the first of three bills of lading to plaintiffs to secure money advanced. When the ship arrived the goods were placed in defendants' warehouse, the master signing an authority to defendants to deliver the goods to the holders of the bills of lading. After receipt from the consignees of the second of the bills of lading and after removal of a stop for freight which the master had lodged, defendants delivered the goods to various persons upon delivery orders signed by the consignee. Plaintiff did not know of this until after the consignees' bankruptcy: *Held* that defendants were not liable to plaintiffs for the value of the goods.—*Glynn, Mills & Co. v. E. & W. India Docks*, 50 L.J. Q.B., 62; 43 L.T. 584.
- (xiv.) **P. D. A. Div.—Bottomry Bond—Necessaries—Money advanced to pay Dock Dues—Priority.**—Plaintiffs, in an action of necessaries against a foreign ship, having, at the request of the master, advanced money to pay dock dues for the ship at the port of discharge, were held entitled

to have the amount paid out of the proceeds of the ship in priority to a bottomry bond-holder, who had advanced money on bottomry at the port of lading.—*The St. Lawrence*, L.R. 5 P.D. 250; 49 L.J. P.D.A. 82.

- (xv.) **H. L.**—*Collision*—36 & 37 Vict., c. 85, s. 17.—The regulations for preventing collisions at sea, made under the authority of the Merchant Shipping Acts, must be strictly followed, actual necessity alone being a sufficient excuse for their non-observance.—*Stoomvaart Maatschappij Nederland v. Peninsular & Oriental Steam Navigation Co.*, L.R. 5 App. 876; 43 L.T. 610; 29 W.R. 173.
- (xvi.) **P. D. A. Div.**—*Collision*—*Compulsory Pilotage*—*Tug and Tow*.—When a ship in charge of a pilot, whose employment is compulsory, is being towed by a steam-tug, and the tug without waiting for orders adopts a wrong manoeuvre and causes the ship to come into collision, the owners of the ship are responsible.—*The Singuasi*, L.R. 5 P.D. 241.
- (xvii.) **P. D. A. Div.**—*Collision*—*Measure of Damages*—*Loss of Charter-Party*.—A vessel on its way to load a cargo pursuant to charter-party was damaged by collision and obliged to put into port to repair, and was in consequence so delayed that she could not have got to her port of loading before it was closed for the winter. Her owners therefore abandoned the charter-party: Held that the loss arising from this was a loss caused by the collision.—*The Consett*, L.R. 5 P.D. 229.
- (xviii.) **P. D. A. Div.**—*Collision*—*Sailing Vessel*.—A sailing vessel hove-to on the port-tack is bound to keep out of the way of a crossing vessel under sail close-hauled on the starboard-tack.—*The Rosalie*, L.R. 5 P.D. 245.
- (xix.) **P. D. A. Div.**—*Collision*—*Thames Navigation*—*Breach of Bye-Law*.—If a collision in the Thames is caused solely by plaintiff, there is no cause of action against defendant on account of the damages being increased by the breach of a bye-law of the Thames Conservancy on his part.—*The Margaret*, L.R. 5 P.D. 238.
- (xx.) **P. D. A. Div.**—*Co-Ownership*—*Receiver*.—The Court will appoint a receiver in a co-ownership suit where circumstances render such a course just and convenient.—*The Amptill*, L.R. 5 P.D. 224.
- (xxi.) **C. A.**—*Foreign Mail Packet*—*Arrest*.—An unarmed packet belonging to the sovereign of a foreign state and in the hands of officers commissioned by him, and employed in carrying mails, is not liable to arrest in a suit *in rem* to recover redress for a collision.—*The Parlement Belge*, L.R. 5 P.D. 197.
- (xxii.) **C. P. Div.**—*Insurance*—*Constructive Total Loss*—*Sale by Master*.—A ship which was stranded was sold by the master for a small sum, and the owners sought to recover from the insurers for a constructive total loss: Held, by Lord Coleridge, C.J., that the only question was whether the ship was at the time she was sold, constructively lost, and that on the facts there was no evidence from which a jury could reasonably find this; by Grove, J., that the question was, whether the circumstances were such as to afford sufficient evidence to be laid before the jury that the sale was justifiable.—*Hall v. Jupe*, 49 L.J. C.P. 721; 43 L.T. 411.
- (xxiii.) **Ex. Div.**—*Insurance*—*Incorporated Company*—*Liability*—30 & 31 Vict., c. 23, s. 7.—Held that a policy of sea insurance issued by an insurance association, incorporated under the Companies Acts, under the common seal of the association, authenticated by the manager's signature, complied with the requirements of sec. 7 of 30 & 31 Vict., c. 23; and, on the rules of the association, that the policy disclosed a contract between the association and the assured.—*Marine Mutual Insurance Association v. Young*, 43 L.T. 441.

- (xxiv.) **C. A.**—*Insurable Interest*.—D. having undertaken to transport the Cleopatra Obelisk to England, expended £4,000 in constructing a vessel to carry it and providing for its transport. He insured the obelisk and vessel for £3,000, and the policies, which were for total loss only, provided that the vessel and obelisk should be valued by agreement at £4,000. On the way to England the obelisk incurred salvage liabilities, and the salvors were awarded £2,000, the obelisk being valued at £25,000: *Held* that the insurers were liable to repay D. the £2,000 under the sue and labour clause in the policies.—*Dixon v. Whitworth*, 43 L.T. 865.
- (xxv.) **C. A.**—*Insurance—Stranding*.—A policy of marine insurance on a cargo contained a warranty of freedom from average unless the ship stranded. The voyage was to a tidal harbour, where the ship must necessarily take ground at every tide. She grounded before reaching the quay on a small bank, and settled down into a hole, whereby the cargo was damaged. The existence of the bank and hole was caused by the passage of steamers and was previously unknown: *Held* that the ship had been stranded within the meaning of the policy.—*Letchford v. Oldham*, L.R. 5 Q.B.D. 588.
- (xxvi.) **C. A.**—*Insurance—Time Policy—Loss by Explosion*.—A time policy contained a clause rendering insurers liable for perils of the seas, fire, and all perils, losses and misfortunes, causing hurt to the ship insured. The vessel, which was a steamer, was damaged by the bursting of a boiler: *Held* that the insured were entitled to recover.—*West India Telegraph Co. v. Home and Colonial Marine Insurance Co.*, L.R. 6 Q.B.D. 51; 50 L.J. C.P. 41; 43 L.T. 420; 29 W.R. 92.
- (xxvii.) **C. P. Div.**—*Insurance—Valued Policies—Compensation for Excess Value*.—Plaintiffs granted to defendants valued policies on a cargo of a United States merchant ship, which was destroyed by the *Alabama* during the American War. The Alabama Indemnity Fund was distributed by the United States, under an Act of Congress, which provided for its distribution to subjects of the States, whose losses were not fully covered by insurance. Plaintiffs were precluded by the Act from making any claim. Defendants obtained compensation in respect of so much of their loss as exceeded the amount insured: *Held* that they held the money so obtained as trustees for plaintiffs.—*Burnand v. Rodocanachi*, L.R. 5 C.P.D. 424; 49 L.J. C.P. 732.
- (xxviii.) **P. D. A. Div.**—*Mortgage of Ship—Charter by Owner—Arrest by Mortgagee*.—When the owner of a mortgaged ship chartered her before the mortgagee takes possession, the mortgagee cannot interfere to prevent the execution of the charter-party, unless it will materially impair the value of his security.—*The Fanchon*, L.R. 5 P.D. 173.
- (xxix.) **P. D. A. Div.**—*Salvage—Agreement set Aside as Inequitable*.—Where in the opinion of the Court, a salvage agreement is exorbitant, the Court will refuse to enforce it.—*The Silesia*, L.R. 5 P.D. 177; 43 L.T. 319; 29 W.R. 156.
- (xxx.) **P. D. A. Div.**—*Salvage—Derelict*.—The Court awarded, as salvage, £2,300 for navigating a derelict, valued at £5,100, which was found in the North Atlantic Ocean, into port.—*The Craigs*, L.R. 5 P.D. 186.
- (xxxi.) **P. D. A. Div.**—*Wages and Disbursements—Habitual Drunkenness of Master*.—A shipmaster who has been habitually drunk during his employment cannot maintain an action for his wages.—*The Macleod*, L.R. 5 P.D. 254.

Solicitor:—

- (iii.) **P. D. A. Div.**—*Lien for Costs—Alimony*.—A solicitor's lien for costs does not extend to money paid to him for a wife's alimony *pendante lite*

in the absence of a direct waiver by her of her right to have it applied as she requires.—*Cross v. Cross*, 43 L.T. 533.

- (iv.) **Ch. Div. F. J.**—*Lien for Costs—Money in hands of Third Party*—23 & 24 Vict., c. 127, s. 28.—An action having been brought against W. and a building society, in which plaintiff claimed money standing in W.'s name on the books of the society, judgment was given for defendants, and W.'s solicitor petitioned for a charging order on the fund; the society opposed on the ground that they had a lien on the fund for their costs: *Held* that the society had no lien on the fund, being in the position of trustees for W.—*Porter v. West*, 48 L.T. 569.
- (v.) **Ch. Div. V. C. M.**—*Mortgage—Declaration of Trust—Solicitor for Both Parties—Notice*.—A client borrowed from his solicitor £8,000 on mortgage, and the solicitor subsequently, by a declaration of trust, declared himself trustee of £800 of this sum for R., another client, who had advanced the £800. The mortgagor had no notice of this advance, and paid off the whole debt to the solicitor, who never paid R.: *Held* that the mortgagor was not affected with constructive notice of R.'s rights.—*Allen v. Lord Southampton, Roper's Claim*, 43 L.T. 625; 29 W.R. 210.
- (vi.) **Ch. Div. V. C. M.**—*Mortgage—Constructive Notice—Solicitor for Both Parties*.—S. made a mortgage to his solicitor B., for £3,000 by deposit of title deeds and memorandum, and B. handed over the deeds and memorandum to C., another client, who had entrusted him with £2,000 for investment, with a memorandum, stating that £2,000 of the mortgage belonged to C. B. afterwards induced C. to give back the deeds, promising to give him deeds of equal value, and he gave C. deeds of no value. Subsequently, the property was sold, and the mortgage paid off to B.: *Held* that S. was not affected with constructive notice of the transfer to C.—*Allen v. Lord Southampton, Bunfather's Claim*, 29 W.R. 231.
- (vii.) **Ch. Div. F. J.**—*Solicitor and Client—Mortgage—Improper Sale—Damages—Costs*.—A solicitor took a mortgage from a client containing a power of sale without giving any notice, and afterwards sold under the power: *Held* that the *onus* lay upon him to show either that he had properly explained the nature of the mortgage, or had given the usual notice; and failing to prove this he was liable for damages to the extent of the costs caused by the sale, the costs of procuring a new investment of a similar nature by the client, the difference between the plaintiff's costs as between party and party and as between solicitor and client, and the increasing value of the property.—*Cockburn v. Edwards*, 29 W.R. 136.

Tithe Rent Charge:—

- (i.) **Ex. Div.**—*Payment by Mistake*.—Plaintiff made over-payments to the Ecclesiastical Commissioners in respect of tithe rent charge, supposing the amounts claimed in notices served on him by them were correct, whereas such amounts included rent charge on land not in his occupation: *Held* that he was entitled to recover the sums paid in mistake, though the time for levying these rent charges upon the land actually liable thereto had run out.—*Durrant v. Ecclesiastical Commissioners*, 50 L.J. Ex. 30.

Trade Mark:—

- (v.) **Ch. Div. M. R.**—*Registration—Cotton Trade Mark—Colour*.—Difference of colour in cotton trade marks will be taken into consideration in considering the question of their similarity to other cotton trade marks already registered.—*Re Robinson's Trade Mark*, 29 W.R. 31.

- (vi.) **Ch. Div. V. C. H.**—*Registration—Cotton Marks—Bleachers' Mark*—Bleachers' trade marks which would not have been sufficiently distinctive to entitle to registration as ordinary cotton marks, ordered to be registered on the bleachers undertaking to use them only by stamping them in a different place on the goods bleached, to that where other cotton trade marks are usually stamped.—*Re Sykes & Co.'s Trade Marks*, 43 L.T. 626; 29 W.R. 285.
- (vii.) **Ch. Div. M. R.**—*Registration—Opposition*.—When an application to register a trade mark is opposed by proprietors of a registered trade mark and the case stands for the determination of the Court under Trade Mark Rules, 1876, r. 16, the proper course is for the applicant to apply in Chambers for directions as to the mode of trial.—*Re Simpson's Trade Mark*, L.R. 15 Ch. D. 525.

Trustee :—

- (vi.) **Ch. Div. V. C. M.**—*Advice of Court—Married Woman of Unsound Mind*—22 & 23 Vict., c. 35, s. 30.—A married woman of unsound mind not so found by inquisition was entitled for her separate use to the income of the trust funds, and her written consent was required to investments by the trustees. On petition under the Trustees Relief Act for advice: Held that the Court had jurisdiction to entertain the petition, and that the whole income might be paid to the husband on his undertaking to apply it to the maintenance of the wife, and that her consent to investments might be dispensed with.—*Re T—*, L.R. 15 Ch. D. 78; 29 W.R. 42.
- (vii.) **C. A.**—*Breach of Trust—Statute of Limitations*.—Where a trustee receives money not belonging to the cestui-que-trust, but which the latter can claim on the ground that the receipt of it was a fraud upon him, the statute of limitations will run against the claim of the cestui-que-trust from the time when he discovers the fraud.—*Metropolitan Bank v. Heiron*, L.R. 5 Ex. D. 319.
- (viii.) **Ch. Div. M. R.**—*Direction to Carry on Trade—Defaulting Trustee—Trade Creditor*.—Where a trader has by his will directed his trustee to carry on his trade, and to employ a part of the trust estate for that purpose, though the trustee is personally liable for debts incurred in the trade, he has the right to resort for his indemnity to the assets directed to be so employed, and consequently, the trade creditors have the same right; but if the trustee is in default to the trust estate devoted to the trade, he can only claim indemnity on his making good his default, and the trade creditors are in the same position.—*Shearman v. Robinson*, L.R. 15 Ch. D. 548; 49 L.J. Ch. 745; 43 L.T. 372; 29 W.R. 168.
- (ix.) **C. A.**—*New Trustee—Lunatic Trustee—Trustee Act, 1850, s. 32*.—One of three trustees became lunatic. On petition in Lunacy and Chancery, for the discharge of the lunatic and re-appointment of the two continuing trustees in place of the three, the Court refused to do so, and required the original number to be filled up.—*Re Colyer*, 50 L.J. Ch. 79; 43 L.T. 454.
- (x.) **Ch. Div. V. C. M.**—*New Trustee—Retiring Trustee—Form of Order*.—Form of order, appointing two continuing trustees to be trustees of property settled by will in place of themselves and retiring trustee.—*Taylor v. Northrop*, 29 W.R. 134.
- (xi.) **Ch. Div. V. C. M.**—*Power of Sale—Infant's Estate—Discretion*.—Testator left real estate to an infant in tail with remainders over, and gave power to his trustees, at the request of the infant's guardians, to sell the property and re-invest. The guardians had requested the trustees to sell part of the property, in order to increase the income,

and one trustee was willing to sell, but the other refused to concur: *Held* that the Court would not interfere with the trustee's discretion.—*Marquis Camden v. Murray*, 29 W.R. 190.

Vendor and Purchaser :—

- (xi.) **Ch. Div. F. J.**—*Conditions of Sale—Suggestio Falsi—Suppressio Veri.*—Conditions of sale of freeholds, provided that the title should commence with a document dated 27th December, 1861, which could be seen at the solicitor's office, and that the purchaser should assume that B. (vendor's predecessor in title) by the said document, and by his undisturbed possession, was, at the time of his death, seized in fee of the property. It appeared from the document that the vendor might have nothing more than a *prima facie* possessory title: *Held* that the condition amounted neither to a *suggestio falsi* nor a *suppressio veri*.—*Blenkhorn v. Penrose*, 29 W.R. 237.
- (xii.) **Ch. Div. D. J.**—*Conditions of Sale—Possession.*—The conditions of sale of a piece of land, provided that the purchaser should be entitled to the possession or the receipt of the rents and profits from a certain date: *Held* that the vendor was bound to give possession to the purchaser on the date specified, and that evidence to prove a contemporary parol agreement varying the condition was inadmissible.—*Anker v. Franklin*, 43 L.T. 317.
- (xiii.) **C. A.**—*Specific Performance—Mistake.*—Property correctly described in the conditions of sale and of which a correct plan was exhibited in the sale-room, was bought by defendant under the impression that his purchase included a piece of land usually occupied with, and not fenced off from, the property sold: *Held* that the defendant could not resist specific performance.—*Tamplin v. James*, L.R. 15 Ch. D. 215; 43 L.T. 520.

Water :—

- (i.) **Q. B. Div.**—*Overflow of Canal—Vis Major—Injuria absque damno.*—After an excessive rainfall, the owners of a canal opened a sluice and discharged water from the canal into a brook which, in consequence, overflowed into plaintiff's mines. If the water had not been so discharged, the canal banks would have burst, and the mines would have been flooded to the same extent, though a few hours later: *Held* that there was no ground of action against the canal owners.—*Thomas v. Birmingham Canal Co.*, 49 L.J. Q.B. 851; 43 L.T. 435.

Will :—

- (xiv.) **Ch. Div. V. C. M.**—*Charity—Mortmain—Charge on Realty and Personality—Apportionment.*—Where part of a fund charged on real and personal estate is given to charities, the legacies to the charities will abate in the proportion borne by the realty to the personality. —*Re Hill's Trusts*, 43 L.T. 623; 29 W.R. 211.
- (xv.) **Ch Div. V. C. M.**—*Construction—Bequest of Leaseholds—Power to retain Investments.*—Bequest to trustees on trust for A. for life with remainders over, with power to retain any portions of testator's property in the same state in which it was at his decease, or to sell and convert as the trustees should think fit: *Held* that the trustees were at liberty to retain short leaseholds held by the testator for such period as they should think fit.—*Gray v. Siggers*, L.R. 15 Ch.D. 74; 49 L.J. Ch. 819; 29 W.R. 13.
- (xvii.) **Ch. Div. V. C. B.**—*Construction—Bequest of Leaseholds—Power of Sale at Discretion.*—Where a testator has given a discretionary power of

sale to his trustees, the rule in *Howe v. Lord Dartmouth* (7 Ves. 187) does not apply; and the Court will not interfere with such discretion.—*Theobald v. King*, 29 W.R. 284.

- (xxviii.) **Ch. Div. V. C. B.**—*Construction—Condition subsequent in Restraint of Marriage—Real Estate.*—Testatrix devised real estate in strict settlement to her brother for life, with remainder to his issue in tail, with remainders over in default of issue, with a proviso that if the brother married at any time a domestic servant, the limitations in favour of himself and his issue were to be null and void. The brother married a domestic servant after testatrix's death: *Held* that the condition was good, and the devises over took effect.—*Jenner v. Turner*, 43 L.T. 468; 29 W.R. 99.
- (xxix.) **Ch. Div. V. C. H.**—*Construction—Erroneous Recital—Advance—Account.*—Testator, having by his will given £7,000 upon trusts for the benefit of a married daughter and her children, by a codicil, after reciting that the daughter's husband owed him £5,000, directed that unless that sum at least should be repaid before his decease, the sum of £5,000 should be taken in part payment and reduction of the legacy of £7,000: *Held* that the legatee was not entitled to show that the recital in the will was erroneous, and that the sum of £5,000 must be deducted from the £7,000.—*Tomlin v. Underhay*, 43 L.T. 530.
- (xxx.) **Ch. Div. M. R.**—*Construction—Farming Stock.*—Where the land is given to A. and the farming stock in or about it to B., the latter is entitled to the growing crops.—*Evans v. Williamson*, 29 W.R. 230.
- (xxxi.) **Ch. Div. M. R.**—*Construction—Gift at Thirty—Maintenance—Vesting.*—Bequest to trustees in trust to pay income to B. for his maintenance till thirty, and then to transfer the capital to him absolutely. B. survived the testator, and died under thirty: *Held* that B. took a vested interest.—*Isaacson v. Webster*, L.R. 16 Ch. D. 47.
- (xxxii.) **Ch. Div. V. C. H.**—*Construction—Gift over on death before Execution of Trusts—Uncertainty.*—Bequest of proceeds of real and personal estate (directed to be converted, with power of postponement) on trust for testator's three sons and daughter equally, the daughter's share to be retained for her separate use for life, and after her decease for her children; with a direction that in the event of any child of testator dying before testator, or before the execution of the trusts of the will, having issue, to pay to the issue the share which the parent would have taken if living: *Held* that the gift over on death before execution of the trusts of the will was void for uncertainty.—*Roberts v. Youle*, 49 L.J. Ch. 744.
- (xxxiii.) **Ch. Div. V. C. B.**—*Construction—Gift to Children—Persons Designate*—1 Vict., c. 26, s. 33.—Testator directed his real estate and household furniture to be sold at his wife's decease and the moneys to be divided equally between his nine children; and he bequeathed the rest of his personal estate to trustees upon trust to sell and divide the same "equally to and between all my children:" *Held* that the gift of residuary personalty was to the nine children as persons designated, and therefore it fell within sec. 33 of the Wills Act.—*Stansfield v. Stansfield*, L.R. 15 Ch. D. 84; 49 L.J. Ch. 750; 43 L.T. 310; 29 W.R. 72.
- (xxxiv.) **Ch. Div. M. R.**—*Construction—Gift to Class—Gift at twenty-one—Maintenance—Vesting.*—Gift of residue to trustees on trust to apply income or such part as they should deem expedient, for maintenance of testatrix's children, until they should attain twenty-one respectively, and then to transfer the capital to her said children in equal shares, and to settle each daughter's share whether original or accruing; with power to the trustees to advance half of the presumptive share of any

of her children. The testatrix left three children of whom one died an infant: *Held* that the infant did not take a vested interest in his share.—*Barker v. Barker*, L.R. 16 Ch. D. 44.

(xxxv.) **Ch. Div. V. C. H.**—*Construction—Lapsed Share of Residue—Intestacy.*—B. gave real and personal estate to trustees on trust to sell, and out of proceeds to pay debts and divide the residue between five persons equally. By a codicil, B. bequeathed to the issue of R., one of the five legatees, all the effects which by the will were bequeathed to R., who was stated to be dead, but if there should be no issue living at B.'s decease, then such effects should fall into the residue of the personal estate. R. never had any issue: *Held* that R.'s share of the residue under the will was undisposed of.—*Hetherington v. Longrigg*, L.R. 15 Ch. D. 635.

(xxxvi.) **Ch. Div. V. C. M.**—*Construction—Objects of Vertu and Taste—Furniture—Pictures.*—One bequest in a will included all testator's jewels, trinkets, gold and silver plate, china, and objects of vertu and taste, and another bequest was of all the statuary, furniture, and other effects in his house: *Held* that pictures in testator's house valued at £15,000, passed under the second bequest.—*Bridgeman v. Lord O. Fitzgerald*, 60 L.J. Ch. 9; 43 L.T. 408.

(xxxvii.) **Ch. Div. M. R.**—*Construction—Power of Appointment—Sale—Ademption.*—Testator had a general power of appointment over the reversion in fee of real estate, which the trustees had power to sell with his consent; part of the estate was sold and another part contracted to be sold with his consent in his lifetime. By a subsequent will he appointed the real estate to trustees for 500 years and subject thereto to the use of A. and his heirs, and subject to the previous appointment he gave all real and personal estate of which he was possessed or over which he had a power of appointment to B.: *Held* that the proceeds of sale of the estate passed to B.—*Blake v. Blake*, L.R. 15 Ch. D. 481.

(xxxviii.) **Ch. Div. M. R.**—*Construction—Residuary Gift—Hotch-pot—Revocation of Share—Lapse.*—Testator gave residuary estate to trustees and executors on trust for his six children *nominatim* equally, and he declared that none of his children who should receive from him any money for advancement should be entitled to any part of his residuary estate without bringing in sums so given with interest at £5 per cent. into hotch-pot. By a codicil he revoked the gift to his son J., whose share in consequence lapsed. J. had received an advancement: *Held* that the hotch-pot clause applied to the shares taken by the children in the lapsed share, but not so as to increase the share of the testator's widow therein.—*Stewart v. Stewart*, L.R. 15 Ch. D. 539; 49 L.J. Ch. 763; 43 L.T. 370.

(xxxix.) **Ch. Div. F. J.**—*Construction—Substitution—Vesting.*—Gift to trustees on trust after a given event to sell and divide amongst all the children of T. and W. and the issue of such of them as should be then dead, share and share alike, such issue taking only his, her, or their deceased parent's share: *Held* that the fund was vested in all the children of T. and W. who came into existence before the event and survived testator, subject to be divested on death before the event leaving issue, in favour of such issue.—*Moore v. Bailey*, 29 W.R. 171.

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ALL REPORTED CASES,

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FOR FEBRUARY, MARCH, AND APRIL, 1881.*

By HENRY M. KEARY, of Lincoln's Inn, Barrister-at-Law.

Administration:—

- (xiv.) **Ch. Div. V. C. M.**—*Executor—Retainer*—32 & 33 Vict., c. 46.—An executor's right of retainer is not affected by 32 & 33 Vict., c. 46.—*Crowder v. Stewart*, L.R. 16 Ch. D. 368; 50 L.J. Ch. 136; 29 W.R. 331.
- (xv.) **Ch. Div. F. J.**—*Executor's Year*.—The Court may order administration of an estate before the expiration of a year from the death of the testator.—*Prosser v. Mossop*, 29 W.R. 439.
- (xvi.) **Ch. Div. V. C. M.**—*Executorship Account—Advances by Banker*.—One of two executors, who was also a residuary legatee, opened an executorship account in his own name with a banker, and the banker advanced money to him for executorial purposes, and securities belonging to the estate were deposited with the banker: *Held* that the banker was justified in making the advances, and entitled to have them repaid out of the proceeds of the securities.—*Child v. Thorley*, L.R. 16 Ch. D. 151; 29 W.R. 417.

Agreements and Contracts:—

- (xiv.) **Ch. Div. V. C. M.**—*Agreement to Settle—Subsequent Settlement*.—A. wrote to B., who had made proposals of marriage to A.'s daughter, that she would have £2,000 at once, and £4,000 on the death of A.'s wife. A year afterwards a settlement was executed by which A. settled £2,000 and the marriage then took place: *Held* that the settlement was a final arrangement between the parties.—*Kingdon v. Tagart*, 43 L.T. 688; 29 W.R. 278.
- (xv.) **Ex. Div.**—*Breach—Damages—Remoteness*.—Defendant agreed to supply plaintiff with stabling for his horses, but did not fulfil his con-

* Cases reported only in the *Law Times Reports* and *Weekly Reporter* for April 30th are postponed till the next Quarterly Digest.

tract, and plaintiff was obliged to take the horses about looking for stabling, and the horses caught cold: *Held* that plaintiff could not recover damages for injury resulting from the illness of the horses.—*McMahon v. Field*, 44 L.T. 175; 29 W.R. 472.

- (xvi.) **H. L.**—*Breach of Forward Contract—Measure of Damages.*—The damages for the breach of a forward contract to accept goods for which there is no market is the amount of damage actually sustained, the person who broke the contract not being liable in respect of additional loss caused by the other party not doing what he reasonably ought to do, and he not being bound to act otherwise than in the ordinary course of business.—*Lever v. Dunkirk Colliery Co.*, 43 L.T. 706.
- (xvii.) **Q. B. Div.**—*Champerty—Money Lent to carry on Litigation.*—An agreement by a person having no interest in an action to furnish money to enable one of the parties to carry it on amounts to champerty, though the party who is to receive the money enters into no agreement to proceed with the litigation.—*Ball v. Warwick*, 44 L.T. 218; 29 W.R. 468.
- (xviii.) **C. A.**—*Contract to pay money to Third Party.*—An agreement between two parties that one of them will pay a certain sum to a third party cannot be enforced by the third party.—*Re Empress Engineering Co.*, L.R. 16 Ch.D. 125; 43 L.T. 742; 29 W.R. 342.
- (xix.) **H. L.**—*Guarantee—Building Agreement—Completion of Houses.*—Plaintiff advanced money to T., who had agreed to build six houses for defendant, and defendant agreed to repay the money advanced on completion of the six houses in accordance with the contract between defendant and T. The contract provided that the houses were to be built under the direction of defendant's surveyor, and the first payment made on the surveyor's certificate of completion. In an action upon defendant's guarantee the jury found that the houses were completed according to the contract before commencement of the action: *Held* that the surveyor's certificate was not a condition precedent to the payment of the £110 to the plaintiff.—*Lewis v. Hoare*, 44 L.T. 66; 29 W.R. 357.
- (xx.) **C. P. Div.**—*Warranty—Estimated Quantity.*—Plaintiffs were informed by a commission agent that defendant had about 150 tons of old iron in his yard for sale, and they wrote to defendant saying that they understood he had about 150 tons of iron for sale, and offered him 80s. a ton. Defendant accepted the offer, but only delivered 44 tons, that being the amount in the yard. The agent had seen the iron in the yard, and had said to defendant that it seemed about 150 tons, and the reply was, "Yes, or more:" *Held* that there was no warranty as to quantity.—*McLay v. Perry*, 44 L.T. 152.

Arbitration:—

- (iv.) **C. A.**—*Award—Mistake.*—A mistake by the arbitrator as to the legal effect of his finding is no ground for setting aside an award.—*Greenwood v. Brownhill*, 44 L.T. 47.
- (v.) **C. A.**—*Claim and Counter-claim—Costs to follow the Event.*—A claim and counter-claim were referred to arbitration by an order providing that the costs were to follow the event unless otherwise ordered. The arbitrator awarded that a certain sum was due from plaintiff to defendant in respect of all matters in the action: *Held* that the award must be referred back to the arbitrator to find specifically the issues between the parties, and that "event" in the reference must be read distributively as if it were "events."—*Ellis v. Desilva*, 44 L.T. 209; 29 W.R. 493.

Bankruptcy:—

- (xi.) **C. J. B.**—*Act of Bankruptcy—Bill of Sale—Past Debt.*—A farmer gave a bill of sale over all his available property to secure a past debt and

any further advances that might be made. Further advances amounting to £70 were made, but these had been more than recouped by the sale of hay off the farm prior to any bankruptcy proceedings: *Held* that the bill of sale was void against the farmer's trustee in bankruptcy. — *Ex parte Thorpe, Re Parker*, 43 L.T. 704.

- (xli.) **Ch. Div. V. C. H.**—*Agreement for Sale or Hire—Distress—Reputed Ownership—Fraud on Bankruptcy Laws.*—An agreement for the hire of wagons at a yearly rent for a fixed period, with an option of purchase for a nominal price at the end of that period, is not, by reason of a stipulation that lenders may distrain as ordinary landlords for arrears of rent upon the personal chattels of the hirer in the event of his bankruptcy, inoperative as against his general creditors. — *Leman v. Yorkshire Wagon Co.*, 50 L.J. Ch. 293; 29 W.R. 466.
- (xlii.) **C. A.**—*Appeal—Stay of Proceedings.*—*Held*, that an appeal from an adjudication in bankruptcy ought to stand over pending the trial of an action, the result of which, it was alleged, would be to render a fund available to satisfy the debt claimed by the petitioning creditor. — *Ex parte Yeatman, Re Yeatman*, L.R. 16 Ch. D. 283; 44 L.T. 260; 29 W.R. 457.
- (xliii.) **C. A.**—*Appeal by Trustee—Costs.*—A trustee in bankruptcy presented an appeal against the admission of a proof, and before the hearing he was removed and a new trustee appointed who declined to proceed with the appeal. The appeal was ordered to stand over for a fortnight, and was then dismissed, none of the creditors having adopted it, and the respondent's costs were ordered to be paid out of the deposit so far as it would extend. — *Ex parte Sheard, Re Pooley* (2), L.R. 16 Ch. D. 110; 44 L.T. 260.
- (xliv.) **C. A.**—*Appeal from County Court—Time—Bankruptcy Rules, 1870, r. 143.*—Sundays are excluded in computing the time to appeal from a County Court to the Chief Judge. — *Ex parte Hall, Re Alven*, L.R. 16 Ch. D. 501; 44 L.T. 8; 29 W.R. 298.
- (xlv.) **C. A.**—*Composition—Authority to carry on Business—Assignment of Book Debts.*—Creditors of a liquidating debtor passed resolutions accepting a composition by instalments, and providing that the trustee should enter into possession of the debtor's stock-in-trade and effects on his failure to pay any instalment. The debtor continued to carry on his trade and assigned his book debts to secure advances which he applied in carrying on his business and paying instalments. He made default in payment of an instalment: *Held* that the assignment was good as against the trustee. — *Ex parte Allard, Re Simons*, L.R. 16 Ch. D. 505; 44 L.T. 35; 29 W.R. 406.
- (xlvi.) **C. A.**—*Composition—Debtor's Statement—Non-assenting Creditor.*—When a debtor, who makes a composition with his creditors, omits from his statement one debt due to a non-assenting creditor, but states another debt due to the same creditor, the creditor is not bound in respect of either debt. — *Macdonald v. Chesney*, 50 L.J. C.P. 87.
- (xlvii.) **C. J. B.**—*Composition—Reduction of Proof—Application by Bankrupt—Locus Standi.*—An undischarged bankrupt who has undertaken to pay a composition has a *locus standi* to apply to the Court to reduce a proof. — *Ex parte Bond, Re Bond*, 43 L.T. 798; 29 W.R. 292.
- (xlviii.) **C. J. B.**—*Composition—Adjournment of Second Meeting—Bankruptcy Act, 1869, s. 126.*—The creditors at a second meeting duly convened under sec. 126 of the Bankruptcy Act, 1869, have power to adjourn the meeting beyond the fourteen days specified in that section. — *Ex parte Knowles, Re Jones*, 44 L.T. 160.

- (xlix.) **C. A.**—*Composition Resolutions—Judgment Creditor—Seizure—Bankruptcy Act, 1869, s. 126.*—A resolution accepting a composition at the first meeting of creditors under sec. 126 of the Bankruptcy Act, does not become an extraordinary resolution until confirmed at the second meeting, and is of no validity until duly registered; therefore a creditor of a compounding debtor who signs judgment and levies execution for his debt before such registration, obtains a valid security on the debtors property, and the fact of his having attended the first meeting of creditors without voting or proving, raises no countervailing equity against him.—*Ex parte Maclaren, Re Maccolla*, L.R. 16 Ch. D. 534; 50 L.J. Ch. 203; 44 L.T. 36; 29 W.R. 389.
- (l.) **C. A.**—*Composition Resolutions—Refusal to Register—Bankruptcy Act, 1869, s. 28.*—Under sec. 28 of the Bankruptcy Act an absolute discretion is given to the Court to refuse to register resolutions for composition. Decision of C. J. B. (*Ex parte Murray, Re Durham*, 43 L.T. 799) reversed.—*Ex parte Merchant Banking Co., Re Durham*, 29 W.R. 363.
- (li.) **C. A.**—*Debtor's Statement—Omission.*—A debtor in his statement described himself as formerly in partnership with certain persons. There were no joint assets or liabilities. The debtor did not mention this in his statement, but stated so subsequently at a general meeting of creditors: *Held* that the statement was insufficient and ought not to be registered.—*Ex parte Buckley, Re Buckley*, L.R. 16 Ch. D. 513; 44 L.T. 39.
- (lii.) **C. J. B.**—*Income of Bankrupt—Voluntary Allowance—Bankruptcy Act, 1869, s. 90.*—A voluntary allowance of which the debtor is in receipt is an income within sec. 90 of the Bankruptcy Act, 1869, and the trustee is entitled to an order setting aside part of it.—*Ex parte Chatterley, Re Wicks*, 44 L.T. 159; 29 W.R. 400.
- (liii.) **C. A.**—*Jurisdiction of Court—County Court.*—Where a matter properly within the jurisdiction of the Bankruptcy Court involves also the character and reputation of persons, it should not be tried before the County Court in which the bankruptcy is proceeding, but in an action in the High Court.—*Ex parte Armitage, Re Learoyd, Wilson & Co.*, 44 L.T. 262.
- (liv.) **C. J. B.**—*Leaseholds—Disclaimer—Enlarging Time for.*—The fact that the lessor has availed himself of provisions in the debtor's lease to compel the trustee in liquidation to pay half a year's rent in advance, is not a ground for enlarging the time for giving notice by the trustee whether he disclaims or not, after the expiration of the 23 days fixed by sec. 24 of the Bankruptcy Act.—*Ex parte Harris, Re Richardson*, L.R. 16 Ch. D. 613; 44 L.T. 282.
- (lv.) **C. A.**—*Liquidation—Building Agreement—Bills of Sale Act, 1854, s. 7 (1).*—A building agreement contained a clause that, upon default in performance on the builder's part, the landlord might re-enter, and thereupon all materials on the land should be forfeited to him: *Held* that the proviso for forfeiture was not void under sec. 7, sub-sec. 1, of Bills of Sale Act, 1854, against the trustee in liquidation of the builder.—*Ex parte Newitt, Re Garrud*, L.R. 16 Ch. D. 522; 44 L.T. 5; 29 W.R. 344.
- (lvi.) **C. J. B.**—*Liquidation—Contractor's Lien for unpaid Purchase-money.*—W. contracted with the debtor to put a set of machinery into a barge belonging to the debtor for £1,050, the money to be paid in two instalments, the first payable when the machinery was put in, the second after the trial trip. Part of the first instalment had been paid, and the barge was ready for the trial trip, when the debtor filed a liquidation petition, and a receiver having been appointed, he took possession of the barge,

which was then lying in dock, entered in the books in W.'s name: *Held* that W. had a lien on the barge and machinery for the money due under his contract.—*Ex parte Willoughby, Re Westlake*, L.R. 16 Ch. D. 604; 44 L.T. 111.

(lvii.) **C. A.**—*Liquidation—Discharge of Debtor—Small Assets—Registration of Resolutions.*—Creditors of a liquidating debtor resolved on a liquidation by arrangement, and gave the debtor an immediate discharge. The assets were very small, and the registration of the resolutions was opposed by a creditor on the ground that the liquidation was an abuse of the process of the Court: *Held* that the resolutions must be registered. *Ex parte Matthews, Re Sharpe*, 50 L.J. Ch. 284; 44 L.T. 117.

(lviii.) **C. A.**—*Liquidation—Payment of Receiver's Charges.*—A receiver of a liquidating debtor's estate, who has handed over the property to the trustees in liquidation, is only entitled to the payment of his charges out of the net assets of the estate, and cannot call for an inquiry into the trustee's accounts.—*Ex parte Brown, Re Maltby*, L.R. 16 Ch. D. 497; 43 L.T. 682.

(lix.) **C. A.**—*Liquidation Petition before Adjudication.*—When once there is adjudication in bankruptcy there is no longer power to go on with an arrangement of the debtor's affairs already commenced, either by way of composition or in liquidation.—*Ex parte Bennett, Re Ward*, L.R. 16 Ch. D. 541; 44 L.T. 38; 29 W.R. 343.

(lx.) **C. J. B.**—*Petitioning Creditor's Debt—Equitable Mortgage—Interest.*—A debtor deposited title deeds with a creditor to secure principal and interest up to a certain date, and agreed to execute, when called upon, a legal mortgage to secure the principal and interest at the rate aforesaid. Neither principal nor interest had been paid: *Held* that the contract was to pay interest at the same rate till repayment of the principal, and that such interest constituted a good petitioning creditor's debt.—*Ex parte Furber, Re King*, 44 L.T. 319; 29 W.R. 524.

(lxi.) **C. A.**—*Proof—Bill of Exchange.*—A holder of an accommodation bill is entitled to prove for the full amount of the bill against the estate of the acceptor in bankruptcy, irrespective of value received, but he may not receive dividends for more than the amount due to him.—*Ex parte Griffin, Ex parte Newton, Re Bunyard*, L.R. 16 Ch. D. 330; 44 L.T. 232; 29 W.R. 407.

(lxii.) **C. J. B.**—*Proof—Part Payment by Surety—Reduction of Proof.*—After a bank had proved its debt, but before the receipt of any dividend, a third person paid to the bank the amount for which he was liable as the debtor's surety: *Held* that such amount must be deducted from the amount of the proof, though, by the bond of suretyship, the surety gave up to the bank all his right to dividends under the bankruptcy of the debtor in part satisfaction of his liability under the bond.—*Ex parte National Provincial Bank, Re Rees*, 44 L.T. 159.

(lxiii.) **C. J. B.**—*Proof—Partnership—Share of Deceased Partner.*—One of three partners having died, the survivors retained in the business, without any authority to do so, the deceased partner's share of the capital, and divided the profits between themselves equally. They afterwards filed a liquidation petition. There were still some joint debts of the old firm unpaid: *Held* that the administratrix of the deceased partner could not prove, in the liquidation, in competition with his creditors in respect of his share of the capital.—*Ex parte Blythe, Re Blythe*, L.R. 16 Ch. D. 620.

(lxiv.) **C. A.**—*Receiver in Action—Receiver in Bankruptcy—Bankruptcy Act, 1869, s. 95.*—A receiver appointed on behalf of an execution creditor

cannot lawfully seize when a receiver in bankruptcy has been appointed, though the creditor may not have had any notice of an act of bankruptcy by the debtor.—*Salt v. Cooper*, L.R. 16 Ch. D. 544; 43 L.T. 682.

- (lxv.) **C. J. B.**—*Secured Creditor—Garnishee Order—Bankruptcy Act, 1869. ss. 16 (5), 95 (3).*—A judgment creditor who, prior to the presentation of a bankruptcy petition against, but after the commission of an act of bankruptcy by the debtor of which he has no notice, has obtained a garnishee order nisi attaching moneys due to the debtor, is a secured creditor within sec. 16, sub-sec. 5, of the Bankruptcy Act, and such garnishee order is an attachment against the goods of the bankrupt within sec. 95, sub-sec. 3.—*Ex parte Pillers, Re Curtoys*, 44 L.T. 224.
- (lxvi.) **C. A.**—*Trustee—Removal of—Bankruptcy Act, 1869, s. 83 (4).*—Though the registrar can only remove a trustee on good cause shown, yet where in removing a trustee he has exercised his judicial discretion according to law, the Court of Appeal will not disturb his order.—*Ex parte Sheard, Re Pooley* (1), L.R. 16 Ch. D. 107; 44 L.T. 259.

Bill of Exchange:—

- (ii.) **H. L.**—*Forged Acceptance—Adoption of Signature.*—Where a person's signature to a bill of exchange has been forged, his mere silence for a fortnight after he first knew of the forgery, during which time the position of the bank which discounted the bill is not altered, will not be held to be an admission or adoption of liability, nor will it work an estoppel.—*McKenzie v. British Linen Co.*, L.R. 6 App. 82; 29 W.R. 477.
- (iii.) **C. A.**—*Indorsement—Right to sue subsequent Indorser—Circuity of Action.*—Plaintiffs drew bills on U., in respect of goods supplied to him which he accepted, and which plaintiffs indorsed to defendant, and defendant indorsed back to plaintiffs. The bills were dishonoured on presentation. In an action by plaintiffs against defendant, the jury found that defendant had indorsed and become surety as indorser to plaintiffs, so as to secure payment for the goods: *Held* that, as there was no consideration for the indorsement from the plaintiffs to defendant, the plaintiffs were entitled to judgment.—*Wilkinson v. Unwin*, 29 W.R. 458.
- (iv.) **C. A.**—*Remittances to cover Acceptance—Appropriation.*—A bank was in the habit of drawing bills on a company which the latter accepted, and the bank remitted bills to the company to provide for meeting the acceptances. The company stopped payment having accepted bills for the bank which had not yet fallen due. At the time of the stoppage, the bank had remitted bills to the company some of which had been discounted. The acceptances were not met, and the bank had to take up the bills drawn by it: *Held* that the bank was not entitled to follow the proceeds of the bills which had been discounted before the stoppage, but was entitled to the proceeds of those which had remained in specie.—*Re Gothenburg Commercial Co.*, 44 L.T. 166; 29 W.R. 358.
- (v.) **H. L.**—*Right to Securities held by Creditor.*—R., a member of a firm of R. and Co., deposited title deeds with the W. bank as security for the floating balance due from his firm. Afterwards D. sold a cargo to R. and Co. who paid for it by a bill of exchange which D. indorsed and paid into the W. bank. R. and Co. stopped payment before the bill became due: *Held* that D. was entitled to have the security held by the bank handed over to him on payment of the balance due from R. and Co. to the bank.—*Duncan, Fox & Co. v. North and South Wales Bank*, L.R. 6 App. 1; 43 L.T. 706.
- (vi.) **Q. B. Div.**—*Undertaking to Renew.*—Defendants accepted a bill payable at four months, upon a written undertaking that, if at the maturity of the bill they had not been paid monies due to them on the return of a

ship, the drawer would renew the bill. More than four months elapsed after maturity of the bill, and the money had never been paid to defendants, and the bill had not been renewed: *Held* that defendants were liable in an action on the bill.—*Heiron v. Morgan*, 44 L.T. 182.

Bill of Sale:—

- (xviii.) **C. A.**—*Consideration*—41 & 42 Vict., c. 31, s. 8.—A bill of sale recited that the grantee had agreed to lend the grantor £7,350 on the security of a bill of sale, and that the bill was executed in pursuance of the agreement and in consideration of £7,350 then paid. In fact the £7,350 was the balance due to the grantee in respect of advances previously made to the grantor: *Held* that the consideration was sufficiently set forth and that the bill was valid.—*Credit Co. v. Pott*, L.R. 6 Q.B.D. 295; 50 L.J. Ex. 106; 29 W.R. 326.
- (xix.) **Q. B. Div.**—*Consideration*—41 & 42 Vict., c. 31, s. 8.—The consideration of a bill of exchange was stated to be £700. That sum was paid by the grantee to the grantor by two cheques, but, on the second cheque being presented, £7 10s. was deducted from the amount of it and retained by the grantee for commission, the borrower at the same time giving a promissory note for £10: *Held* that the consideration was not duly stated.—*Hamilton v. Chaine*, 29 W.R. 488.
- (xx.) **Q. B. Div.**—*No Covenant not to Sell*—*Sale by Debtor*.—G. assigned to plaintiff, by a bill of sale, which contained no covenant not to sell, all the goods and farming stock then or thereafter on his farm, to secure the payment of £26 on demand. Before any demand for payment had been made, G. sold some of the goods to defendant, who removed them: *Held* that plaintiff was entitled to recover in an action for conversion.—*Payne v. Fern*, 29 W.R. 441.

British Honduras, Law of:—

- (i) **P. C.**—*Crown Grant*—*Sovereignty of Crown*—*Will*—*Construction*—*Effects*.—Grants of land in a colony by the Crown afford ample evidence that the Crown has assumed territorial dominion in such colony. A testator had, under a treaty, the right of occupying a parcel of land for the purpose of cutting timber: *Held* that this right was included under a devise of his effects.—*Attorney-General of British Honduras v. Bristowe*, L.R. 6 App. 143; 50 L.J. P.C. 15; 44 L.T. 1.

Burial Ground:—

- (i) **Ex. Div.**—*Exclusive Right of Burial*—*Grant to one and his heirs*—*Conversion*—*Election*—15 & 16 Vict., c. 85, s. 33.—An exclusive right of burial in certain grave spaces was granted by a burial board to E. and her heirs, to hold to the said E., her heirs and assigns, for ever, the purchase-money being found by her out of her late husband's estate, of which she was executrix, and which he had left to her for life with remainder to his children equally: *Held* that the right descended upon E.'s death intestate to her heir-at-law, and that, as the other children had not elected to take the testator's property in its converted state, one of them could not claim to exercise the right as forming part of the testator's property.—*Matthews v. Jeffery*, L.R. 6 Q.B.D. 290; 50 L.J. Ex. 164; 43 L.T. 796; 29 W.R. 282.

Ceylon, Law of:—

- (i) **P. C.**—*Adverse Possession*—*Proof*—*Ordinance No. 22, 1871*.—The adverse possession required to be proved by the Ordinance of Ceylon, No. 22, 1871, to entitle a defendant to a decree, must be by actual physical possession proved by overt acts done on the land in dispute.—*Clark v. Elphinstone*, L.R. 6 App. 164; 50 L.J. P.C. 22.

Charity:—

- (ii.) **Ch. Div. V. C. H.**—*Charity Commissioners—Consent to Sale*—16 & 17 Vict., c. 137, s. 62; 18 & 19 Vict., c. 124, s. 29.—The Royal Society of London being licensed to purchase lands and hold them in mortmain, bought certain lands out of moneys arising from voluntary contributions: *Held* that the consent of the Charity Commissioners to the sale of the lands by the Society was not required.—*Re Royal Society and Thompson*, 44 L.T. 274.

Club:—

- (i.) **C. A.**—*Expulsion of Member*.—Where a club has expelled a member, the Court will enquire whether the expulsion was conducted in accordance with the rules, but will not review the discretion of the club in exercising the power of expulsion unless malice can be shown to have influenced that discretion.—*Dawkins v. Antrobus*, 29 W.R. 511.

Company:—

- (xxxv.) **Ch. Div. V. C. M.**—*Application for Shares—Allotment—Repudiation—Costs*.—A. applied for shares in a company of which G. was director and chairman, by reason of his confidence in G. Before allotment G. resigned his position, and the company allotted shares to A., and told him of the retirement of G. Thereupon A. asked to cancel his application, but the company refused to consent: *Held* that A.'s name must be removed from the register, with costs of the application as between solicitor and client against the company.—*Anderson's Case, Re Scottish Petroleum Co.*, 50 L.J. Ch. 269; 43 L.T. 723; 29 W.R. 372.
- (xxxvi.) **C. A.**—*Agreement by Promoters—Ratification*.—A company cannot ratify an agreement made on its behalf before the company was incorporated.—*Re Empress Engineering Co.*, L.R. 16 Ch. D. 125; 43 L.T. 742; 29 W.R. 342.
- (xxxvii.) **C. A.**—*Agreement signed by Directors—Liability*.—Decision of Q.B. Div. (see *Company i.*, p. 9) affirmed.—*McCollin v. Gilpin*, 29 W.R. 403.
- (xxxviii.) **Ch. Div. V. C. H.**—*Articles—Borrowing Powers—Capital not called up*.—The articles of a company provided that the directors might borrow upon the security of that portion of the capital not called up or of other property of the company a sum not exceeding two-thirds of the capital for the time being not called up. Capital was, by the interpretation clause, to mean the nominal capital from time to time or (as the context might require) the capital moneys from time to time of the company: *Held* that the capital not called up referred to in the articles included unissued capital.—*English Channel Steamship Co. v. Rolt*, 44 L.T. 135.
- (xxxix.) **Ch. Div. F. J.**—*Construction of Special Act—Borrowing Powers*—8 Vict., c. 16, ss. 41, 42.—The construction of the special Act of a company, incorporated for the purpose of draining and reclaiming land, considered with regard to its power to contract with limited owners, and to obtain charges on the property drained or reclaimed, and also to borrow money. Secs. 41, 42, of Companies Clauses Act, 1845, do not make void an instrument the consideration for which is apparent, though not in terms stated.—*Landowners Drainage and Inclosure Co. v. Ashford*, L.R. 16 Ch. D. 411; 50 L.J. Ch. 276; 44 L.T. 20.
- (xl.) **Ch. Div. M. R.**—*Dividends out of Capital—Preference Shareholders—Net Profits*.—The articles of a limited tramway company provided that dividends should be paid only out of profits, after a reserve fund for maintenance and repairs had been set aside. The directors had, for some time past, failed to set apart a sufficient reserve fund, and the amount

required to restore the plant of the company exceeded the whole of the net profits in the hands of the directors: *Held* that the company could only declare a dividend out of net profits after making due provision for the maintenance of the tramway; but the preference shareholders, whose dividends were dependent on the profits of each year, were entitled to a dividend out of the profits of any year after setting aside a proportionate part sufficient for the maintenance of the tramway for that year only.—*Dent v. London Tramways Co.*, L.R. 16 Ch. D. 344; 50 L.J. Ch. 190; 44 L.J. 91.

- (xli.) **Ch. Div. M. R.**—*Promoter—Fraud—Bankruptcy—Bankruptcy Act, 1869, ss. 31, 49.*—On the trial of issues it was found that defendant was a promoter of a company and accountable to it for a sum of £108,000 received by him as profit under undisclosed agreements. After the finding of the issues defendant went into liquidation: *Held* that defendant's liability was incurred by means of fraud and breach of trust within the meaning of sec. 49 of the Bankruptcy Act; and that it was not a demand in the nature of unliquidated damages arising otherwise than by reason of a contract, within sec. 31.—*Emma Mining Co. v. Grant*, 29 W.R. 481.
- (xlii.) **C. A.**—*Promoter—Prospectus—Material Concealment—Decision of Fry, J. (see Company xxvi., p. 51) reversed.*—*Arkwright v. Newbold*, 29 W.R. 455.
- (xliii.) **Ch. Div. M. R.**—*Unregistered Company—Similarity of Names—Injunction—Companies Act, 1862, s. 20.*—(On motion on behalf of a company, incorporated in 1836, and not registered under the Companies Act, 1862, for an injunction to restrain defendants from registering a new company under a similar name: *Held* that sec. 20 of the Companies Act, 1862, did not apply, and plaintiffs not having alleged fraudulent intention on the defendants part, the action was dismissed and leave to amend refused.—*Hendricks v. Montagu*, 50 L.J. Ch. 257; 44 L.T. 89.
- (xliv.) **C.P. Div.**—*Winding-up—Building Society—Foreclosure—Appeal from County Court—25 & 26 Vict., c. 89, s. 87; 30 & 31 Vict., c. 131, s. 43; 37 & 38 Vict., c. 42, s. 32.*—The directors of an incorporated building society gave a depositor a bond in which the funds and assets of the society were declared to be held liable for the repayment of the deposit. The depositor brought an action for foreclosure on the bond, and while the action was pending a winding-up order was made in a County Court, and the Judge refused leave to the depositor to continue his action: *Held* that the Companies Acts, 1862 and 1867, apply to the Building Societies Act, 1874, and that an appeal on a matter of discretion lay to the Court; that the effect of sec. 32 of the last-mentioned Act is to substitute the County Court for the Court of Chancery, and that the bond was not a mortgage, and a foreclosure action could not be maintained upon it.—*Andrew v. Swansea Cambrian Building Society*, 44 L.T. 106; *Jones v. Swansea Cambrian Building Society*, 29 W.R. 382.
- (xlv.) **C. P. Div.**—*Winding-up—Contributory—Set-off—Counter-claim.*—A person who has been duly settled on the list of contributories of a company, and on whom calls have been made, cannot, in an action for calls by the liquidator, counter-claim for a debt or damages due to him from the company.—*Government Security Investment Co. v. Dempsey*, 50 L.J. C.P. 199.
- (xlii.) **Ch. Div. M. R.**—*Winding-up—Fire Insurance—Proof—Judicature Act, 1875, s. 10.*—The holder of a policy of insurance against fire granted by a limited company, and which is current at the date of the winding-up of the company, is entitled to prove for the full amount of his policy when a loss by fire exceeding such amount occurs after winding-up and

before the time limited for sending in claims against the company.—*Re Northern Counties Fire Insurance Co.*, 50 L.J. Ch. 273; 44 L.T. 299.

- (xlvii.) **Ch. Div. F. J.**—*Winding-up—Lease of Mine—Retention by Liquidator—Rent.*—A coal mine was let to a company by a lease containing a power for the lessor, if rent should remain unpaid for 30 days, to stop the working of the mine and distrain, and if the distress should be insufficient, to enter and determine the lease. Rent became due on November 3rd, and on the 5th the company was ordered to be wound-up. On December 6th the lessor required the liquidator to pay the rent, and stated that otherwise he should apply to the Court to restrain the working. The liquidator did not pay the rent, and continued to work the mine: *Held* that leave should be given to the lessor to distrain for the full rent which accrued due on November 3rd.—*Ex parte Perkins, Re Silkstone & Dodworth Coal & Iron Co.*, 29 W.R. 484.

- (xlviii.) **C. A.**—*Winding-up—Leave to Sue in Name of Company.*—A company being in course of liquidation, certain costs were ordered to be taxed and paid to R. out of the assets. After taxation the liquidators represented that there were no assets available, and they refused to bring an action against former directors to make them account for moneys alleged to have been improperly received by them. *Held* that R.'s solicitors were not creditors of the company in respect of the costs ordered to be paid to R., and could not have leave to bring the action in the name of the company.—*Cape Breton Co. v. Fenn*, 29 W.R. 386.

- (xlix.) **Ch. Div. V. C. B.**—*Winding-up—Secured Creditor—Failure of Security—Judicature Act, 1875, s. 10.*—A creditor of a company believing himself to be fully secured by the hypothecation of a call on the company's shares, made no claim in the winding-up. It afterwards turned out that his security was defective, owing to the call moneys hypothecated having been paid away: *Held* that he was entitled to value his security and prove for the balance, not disturbing any dividend already declared.—*Ex parte Williams, Re Kit Hill Tunnel*, L.R. 16 Ch. D. 590; 50 L.J. Ch. 303; 29 W.R. 419.

- (i.) **Ch. Div. V. C. M.**—*Winding-up—Servants' Wages—32 & 23 Vict., c. 71, s. 32—Judicature Act, 1875, s. 10.*—The rule in bankruptcy that servants wages shall be paid in priority to all other debts is, by sec. 10 of Judicature Act, 1875, extended to windings-up.—*Re Association of Land Financiers*, L.R. 16 Ch. D. 373; 50 L.J. Ch. 201; 43 L.T. 755; 29 W.R. 277.

- (ii.) **Ch. Div. V. C. M.**—*Winding-up voluntarily—No liquidator Appointed—Distress.*—On July 30th a company passed a resolution for a voluntary winding-up, but appointed no liquidators. The landlord of the company distrained for rent. On August 9th liquidators were appointed, and on the 18th a compulsory order for winding-up was made: *Held* that the distress was validly levied.—*Thomas v. Patent Lionite Manufacturing Co.*, 44 L.T. 94; 29 W.R. 349.

County Court:—

- (v.) **Q. B. Div.**—*Admiralty Jurisdiction—Action in rem for Necessaries—31 & 32 Vict., c. 71, s. 2.*—A County Court exercising Admiralty jurisdiction under County Courts Admiralty Jurisdiction Act, 1868, cannot entertain a claim for necessities against a British ship, whose owner is domiciled in Great Britain.—*Allen v. Garbutt*, L.R. 6 Q.B.D. 165; 50 L.J. Q.B. 141; 29 W.R. 287.
- (vi.) **C. A.**—*Control over by High Court—Notes by Judge—Signing Notes—38 & 39 Vict., c. 50, s. 6.*—Decision of Q.B. Div. (see County Court iii, p. 52) affirmed.—*Morgan v. Rees*, 44 L.T. 133; 29 W.R. 345.

- (vii.) **C. P. Div.**—*Costs—Action Remitted to County Court*—19 & 20 Vict., c. 108, s. 26—*Ord. 55*.—The costs of an action remitted by the Superior Court to the County Court for trial, under 19 & 20 Vict., c. 108, s. 26, are not within the jurisdiction of the County Court.—*Farmer v. May*, 50 L.J. C.P. 295; 44 L.T. 148.

Crimes and Offences:—

- (xi.) **C. A.**—*Assault—Consent—Submission*.—Decision of C. P. Div. (see *Crimes and Offences* vii., p. 58) affirmed.—*Latter v. Braddell*, 29 W.R. 366.
- (xii.) **C. C. R.**—*Bigamy—Presumption of Duration of Life*.—In 1864 W. married A. In 1868 he was convicted of bigamy for marrying B., A. being then alive. In 1879 he married C., and in 1880, C. being then alive, he married D. On a charge of bigamy for marrying D., C. being then alive: *Held* that the question should have been left to the jury whether A. was not alive when W. married C., as, if so, the marriage with C. would be invalid.—*Regina v. Wiltshire*, L.R. 6 Q.B.D. 366; 44 L.T. 222; 29 W.R. 473.
- (xiii.) **Q. B. Div.**—*Corrupt Practices at Election—Information*—33 & 34 Vict., c. 75, s. 91.—G. was convicted on an information charging him with having been guilty of corrupt practices at a school board election "contrary to the sub-section of sec. 91 of the Elementary Education Act, 1870:" *Held* that the conviction was bad, as the offence ought to have been specified and the time and place mentioned in the information.—*Regina v. Ingall*, 29 W.R. 288.
- (xiv.) **Q. B. Div.**—*Elementary Education Acts—Attendance Order—School Fees*—33 & 34 Vict., c. 75, s. 17; 39 & 40 Vict., c. 79, ss. 10-12.—A parent who, under an order by a court of summary jurisdiction that his child shall attend a board school and that he do see the order complied with, causes the child to attend the school but without paying the school fees, is not liable to conviction under sec. 12 of the Elementary Education Act, 1876, for non-compliance with the order.—*Richardson v. Saunders*, L.R. 6 Q.B.D. 313.
- (xv.) **Ch. Div. F. J.**—*Forcible Entry—Occupier Holding Over—Damages*—5 Ric. II., c. 1, s. 8.—Where an occupier unlawfully holds possession of a house against the rightful owner, and the owner forcibly enters and ejects the occupier, although the occupier cannot claim damages in respect of the forcible entry, he can for independent wrongful acts done at the time.—*Beddall v. Maitland*, 44 L.T. 248; 29 W.R. 484.
- (xvi.) **Q. B. Div.**—*Malicious Prosecution—Prosecution by Police of Railway Company*.—An action was brought against a railway company for malicious prosecution, plaintiff having been prosecuted by the police of the company: *Held* that such action would lie.—*Edwards v. Midland Rail. Co.*, L.R. 6 Q.B.D. 287; 50 L.J. Q.B. 281; 43 L.T. 694.
- (xvii.) **C. A.**—*Parliamentary Oath—Right to Affirm—Penalty—Informer*—29 & 30 Vict., c. 19; 32 & 33 Vict., c. 68.—It is no defence to an action for a penalty for having sat and voted in the House of Commons without having taken the oath, that the defendant was a person upon whose conscience an oath had no binding effect, and that he had, before sitting and voting, made a solemn affirmation. The penalty imposed by sec. 5 of Parliamentary Oaths Act, 1866, may be sued for by a common informer.—*Clarke v. Bradlaugh*, 29 W.R. 516.

Debtor and Creditor:—

- (viii.) **Ch. Div. V. C. B.**—*Attachment of Debt—Second Mortgage—Sale by First Mortgagees—Priorities*.—A judgment creditor of a second mortgagee who has obtained a garnishee order against the mortgagor is not entitled to the surplus proceeds of the mortgaged estate when sold by the first

mortgagee under his power of sale after the date of the order. But the holder of a garnishee order against the first mortgagee, it having been obtained after the sale, is entitled to attach the surplus proceeds in the hands of the first mortgagee.—*Chatterton v. Watney*, L.R. 16 Ch. D. 378; 50 L.J. Ch. 227; 44 L.T. 53; 29 W.R. 373.

- (ix.) **C. P. Div.** *Execution - Composition—Failure to withdraw Sheriff.*—In the absence of malice no action will lie against a judgment creditor for not withdrawing the sheriff from possession after the creditor has become bound by a composition of the debt.—*Phillips v. General Omnibus Co.*, 50 L.J. C.P. 112.
- (x.) **Q. B. Div.**—*Judgment Summons—Garnishee Order—Concurrent Remedies.*—A judgment creditor obtained an order for the examination of the debtor, with a view to ascertaining whether any debts were due to him. The debtor failed to appear, and the creditor obtained a judgment summons by which the debtor was ordered to pay the amount of the debt by instalments: Held that having obtained this order he was not entitled to an order for the debtor's attachment for not appearing for examination.—*Hayton v. Beall*, 44 L.T. 131; 29 W.R. 333.
- (xi.) **Ch. Div. V. C. B.**—*Price of Officer's Commission—Incumbrancers—Notice—Priority.*—The incumbrancer who gives notice to the army agents who have received the money paid by the Army Purchase Commissioners for an officer's commission, first after the publication in the *Gazette* announcing the officer's retirement, will have priority; and where several give notice simultaneously, they will rank according to the seniority in date of the instruments creating their incumbrances.—*Johnstone v. Cox*, L.R. 16 Ch. D. 571; 50 L.J. Ch. 216; 43 L.T. 690; 29 W.R. 351.
- (xii.) **C. A.**—*Retired Vicar—Assignment of Pension—34 & 35 Vict., c. 44, ss. 10, 12.*—A pension granted to a retired vicar under the Incumbents' Registration Act, 1871, is inalienable.—*Gathercole v. Smith*, 29 W.R. 434.

Defamation:—

- (iv.) **P. C.**—*Slander—Inuendo—Doubtful Meaning.*—In an action for slander, if the declaration contains inuendoes, a plaintiff cannot substitute for them a prefatory averment in the same declaration imputing motives to defendant. If the words complained of have two meanings, one imputing suspicion, and the other guilt, the question in which sense they were used is one for the jury, and a witness to whom the words were addressed cannot be asked in what sense he understood them.—*Simmons v. Mitchell*, L.R. 6 App. 156; 50 L.J.P.C. 11; 43 L.T. 710; 29 W.R. 401.
- (v.) **Q. B. Div.**—*Slander—Privilege—Examination before Parliamentary Committee.*—A witness examined before a Committee of one of the Houses of Parliament is absolutely privileged as to anything he may say in his evidence.—*Goffin v. Donnelly*, L.R. 6 Q.B.D. 307; 44 L.T. 141; 29 W.R. 444.

Easement:—

- (vii.) **Ex. Div.**—*Lease for Years—Right of Way—User of Roadway.*—On a special case stated in an action for damages for wrongful entry, the Court was equally divided in opinion as to whether a grant of a right of way over the grantor's land was limited to the use of the way for the special purposes expressed in the grant, or whether it gave an unqualified right of way.—*Sumner v. Schofield*, 43 L.T. 768.
- (viii.) **Ch. Div. M. R.**—*Light—Simultaneous Sale of House and Land Adjoining.*—Where the owner of a house and adjoining land sells the house

to one and the land to another by simultaneous conveyances, each purchaser being aware of the conveyance to the other, the purchaser of the land is not entitled to obstruct the lights of the house.—*Allen v. Taylor*, L.R. 16 Ch. D. 855; 50 L.J. Ch. 178.

Ecclesiastical Law:—

- (iv.) **C. P. Div.**—*Simony*—31 *Eliz.*, c. 6, s. 5.—Plaintiff who was patron and incumbent of a living, by the leave of the bishop let the rectory house in order to recoup himself moneys expended in putting it in repair. Before the end of the lease he resigned and presented the defendant: *Held* that an agreement by defendant, at the time of presentation, to hand over to plaintiff any rent he might receive from the tenant of the house, was simoniacal and void, but that an agreement by defendant to pay for certain removable fixtures according to a valuation was not void.—*Mosse v. Killick*, 44 L.T. 149; 29 W.R. 522.
- (v.) **C. A.**—*Writ de Contumace Capiendo*—5 *Eliz.*, c. 22, s. 3; 53 *Geo. III.*, c. 127, s. 1; 12 & 13 *Vict.*, c. 109, ss. 26, 27.—Decision of Q.B. Div. (see *Ecclesiastical Law* iii., p. 54) reversed on the ground that the writ ought to have been brought into and opened in the Q.B. Div.; and that the omission to do so rendered an arrest under the writ illegal.—*Dale's Case*, *Enraght's Case*, L.R. 6, Q.B.D. 376; 50 L.J. Q.B. 234; 43 L.T. 769.

Election:—

- (xii.) **C. A.**—*Municipal Election*—*Petition*—*Returning Officer*—*Respondent*—35 & 36 *Vict.*, cc. 33, 60.—The Mayor, at the time of nomination of candidates for election to a municipal ward, declared the petitioner to be disqualified by reason of a mistake in his description on the burgess roll; and the other candidate was declared duly elected. On petition against the election: *Held*, reversing the decision of the C. P. Div. (50 L.J. C.P. 185), that the mayor ought not to be made a respondent.—*Harmon v. Park*, L.R. 6 Q.B.D. 323; 50 L.J. C.P. 227; 44 L.T. 81.
- (xiii.) **Elect Pet.**—*Parliament*—*Bribery*—*Agent*—*Proof of Agency*.—*Held* that the effect of indirect evidence was to show that A. was an agent of respondent.—*Collins v. Price*, 44 L.T. 192.
- (xiv.) **Elect Pet.**—*Parliament*—*Corrupt Practices*—*Agent*.—An agent of respondent gave a holiday to respondent's work people on the polling day and their wages were paid then as usual: *Held* that respondent's return was void for bribery by his agent. The funds of a political association were chiefly supplied to the secretary by the respondent, and they were spent in treating at meetings held to promote respondent's election: *Held* that the secretary was the agent of respondent.—*Truscott v. Bevan*, 44 L.T. 64.
- (xv.) **Elect Pet.**—*Parliament*—*Bribery*—*Evidence*—*Production of Telegrams*.—Statements made after an election by an agent are not evidence against the candidate. An elector may not be asked his political opinions unless he has previously avowed them. The Post-office authorities may be ordered to produce specified telegrams.—*Tomline v. Tyler*, 44 L.T. 187.
- (xvi.) **Elect Pet.**—*Parliament*—*Bribery*—*Payment of Travelling Expenses*.—Two out-voters were requested by letter to come and vote for a candidate, and they did so without any promise of payment of their expenses. After they had voted a sum equal to the first-class railway fare from the place whence they came and back was paid to them. They, in fact, travelled third-class: *Held* no evidence of corrupt payment.—*Rigden v. Passmore Edwards*, 44 L.T. 192.
- (xvii.) **Elect Pet.**—*Parliament*—*Bribery*—*Agency*—*Evidence*.—The liability of candidates for corrupt acts of members of political associations, and

what is sufficient evidence of bribery and agency, considered.—*Spencer v. Harrison*, 44 L.T. 283.

- (xviii.) **Elect Pet.**—*Parliament—Bribery—Evidence—Witness—Apprehension.*—The Court has no jurisdiction to apprehend persons who evade service of *subpœnas*. Consideration of what evidence is admissible on an election petition.—*Heywood v. Dodson*, 44 L.T. 285.
- (xix.) **Elect Pet.**—*Parliament—Bribery—Withdrawal of Charges.*—The Court will not actively sanction the withdrawal of charges of corruption made in an election petition.—*Buxton v. Garfit*, 44 L.T. 287.
- (xx.) **Q. B. Div.**—*School Board—Corrupt Practices—Summary Conviction.*—33 & 34 Vict., c. 75, s. 91.—Justices sitting at petty sessions have summary powers to deal with offences under sec. 91 of Elementary Education Act, for corrupt practices at school board elections.—*Regina v. Gaunt*, 50 L.J. M.C. 32; 43 L.T. 696; 29 W.R. 289.

Evidence:—

- (viii.) **Ch. Div. F. J.**—*Against Interest—Course of Business.*—A statement as to receipts from an agent signed by a deceased principal is admissible as evidence of the rent paid for a particular property; but a rent-roll signed by a deceased solicitor who was paid to audit the accounts by testing the arithmetic, but not by examining vouchers, is not admissible in evidence.—*Vivian v. Moat*, 44 L.T. 210; 29 W.R. 504.
- (ix.) **C. A.**—*Deed—Stamp*—33 & 34 Vict., c. 97, s. 17.—Decision of M. R. (see *Evidence* iii., p. 16) affirmed.—*Whiting to Loomes*, 29 W.R. 435.
- (x.) **Ch. Div. F. J.**—*Inconsistent Statement of Defendant—Recalling Witness*—17 & 18 Vict., c. 125, s. 23.—Where defendant, who claimed to be owner of a mill, denied on cross-examination that he had ever stated that he was tenant only, plaintiff was allowed to call a witness to prove that defendant had so stated, though the same witness had been previously examined.—*Sykes v. Haig*, 44 L.T. 57.

Fraud:—

- (i.) **C. A.**—*Misrepresentation—Damages.*—T. having applied to plaintiff for a lease of certain premises, gave defendant as a reference, and defendant, in reply to express enquiries by plaintiff, stated that he knew T. to be in a good and responsible position. In fact defendant knew that T. had no means and had twice previously failed in business: *Held* that defendant was answerable to plaintiff in damages for this misrepresentation, T. having deserted the premises without paying his rent.—*Leddell v. McDougall*, 29 W.R. 408.

Highway:—

- (ix.) **H. L.**—*Repair—Turnpike Trust—Compensation for Damage*—11 & 12 Vict., c. 63, s. 144.—Defendants agreed with the trustees of a turnpike road to repair and maintain the footway only of the road. They raised the level of the footway and thereby caused damage to property of the plaintiff: *Held* that this damage was the subject of compensation under sec. 144 of the Public Health Act, 1848.—*Mayor of Accrington v. Nutter*, 48 L.T. 710.
- (x.) **C. P. Div.**—*Subsidence of Land—Raising of Road by Local Board—Owner of Houses—Compensation*—38 & 39 Vict., c. 55, ss. 144, 308.—Plaintiffs were owners of houses abutting on a highway which was vested in a local board acting under the Public Health Act, 1876, and having the powers and liabilities of surveyor of highways. In 1876 the surface of the highway and the land on which the houses were built subsided so that a part of the roadway became liable to be flooded so as to render

traffic impossible. The local board raised the roadway at this place, and plaintiffs raised their houses in proportion: *Held* that plaintiffs were not entitled to compensation from the board in respect of the cost of raising their houses.—*Burgess v. Northwich Local Board*, L.R. 6 Q.B.D. 264; 50 L.J. C.P. 219; 44 L.T. 154.

Husband and Wife:—

- (xviii.) **Ch. Div. V. C. M.**—*Bequest to Wife of Solicitor—Will drawn by Husband—Implied Trust—Reduction into Possession.*—A testator left property to a married niece without any provision for securing it to her separate use, and appointed the niece's husband, who was his solicitor and who drew the will, his sole executor. The testator and the husband having both died: *Held* that the husband could not be declared a trustee for his wife of her share of the testator's estate, but that she had a right to so much of it as had not been reduced into possession by her husband by change of investment.—*Wilson v. Birchall*, 44 L.T. 243; 29 W.R. 461.
- (xix.) **P. D. A. Div.**—*Divorce—Absence of Petitioner—Affidavit verifying Petition.*—Where petitioner in a suit for dissolution of marriage was engaged on military service abroad, where there was no person having authority to take affidavits, the Court allowed the petition to be verified by the affidavit of his solicitor.—*Bruce v. Bruce*, 29 W.R. 474.
- (xx.) **P. D. A. Div.**—*Divorce—Desertion—Evidence of.*—A husband left his wife in possession of the family house, and subsequently, with her assent, visited his children there, but did not return to cohabitation with his wife, or hold any communication with her: *Held* no evidence of desertion.—*Taylor v. Taylor*, 44 L.T. 31.
- (xxi.) **P. D. A. Div.**—*Divorce—New Trial.*—After decree nisi for dissolution of marriage had been pronounced a new trial was directed, and on the second trial the Court again pronounced a decree nisi. After the expiration of the term for moving for a new trial and more than six months after the first trial, the Court made the original decree absolute, without waiting till the expiration of six months from the date of the second trial.—*Sheffield v. Sheffield*, 29 W.R. 523.
- (xxii.) **C. A.**—*Divorce in Scotland.*—The English Divorce Court will recognise as valid the decree of a Scotch Court dissolving the marriage of domiciled Scotch persons, though married in England.—*Harvey v. Farnie*, 43 L.T. 737; 29 W.R. 409.
- (xxiii.) **C. A.**—*Married Woman—Separate Estate—Debt—Charge—Interim Injunction.*—A creditor cannot obtain an interim injunction to restrain a married woman from dealing with her separate estate pending the trial of an action to establish a charge against it. Decision of V.C.M. (L.R. 15 Ch. D. 371) reversed.—*Robinson v. Pickering*, 44 L.T. 165; 29 W.R. 385.
- (xxiv.) **P. D. A. Div.**—*Nullity of Marriage—Decree Nisi—Respondent's Motion to make Absolute*—36 & 37 Vict., c. 31, s. 1.—The Court will not, upon the motion of the respondent, make absolute a decree nisi in a suit for nullity of marriage.—*Halpin v. Boddington*, 44 L.T. 252; 29 W.R. 444.
- (xxv.) **P. D. A. Div.**—*Protection Order—Discharge after Wife's death—Probate Action—Counter-claim.*—It is competent for a husband, after the death of his wife, to apply to have a protection order discharged, on the ground that it was obtained fraudulently without his knowledge; and he can make such application by way of counter-claim in an action for probate of his wife's will.—*Mudge v. Adams*, 44 L.T. 185; 29 W.R. 307.

- (xxvi.) **Ch. Div. V. C. M.**—*Settlement—Joint-Tenancy—Severance.*—A marriage settlement contained a covenant by the intended wife and husband to assign to trustees any personal estate which should, during the coverture, vest in her or in her husband in her right. At this time she was entitled, as joint-tenant with her sister, to personal property expectant on the death of B., who died during the coverture: *Held* that the joint-tenancy was severed by the marriage and the covenant to assign.—*Baillie v. Traherne*, 50 L.J. Ch. 295; 44 L.T. 247.
- (xxvii.) **Ch. Div. V. C. M.**—*Wife's Equity to Settlement—Waiver—Infant.*—An infant married woman cannot waive her equity to a settlement.—*Shipway v. Ball*, L.R. 16 Ch. D. 376; 50 L.J. Ch. 263; 44 L.T. 49; 29 W.R. 302.

Justice of Peace:—

- (i.) **Q. B. Div.**—*Disqualifying Interest—Urban Authority—Municipal Corporation.*—By a local Act the corporation of a borough was made the authority for the execution of the Act, with power to direct prosecutions for that purpose. An information for an offence under the Act having been preferred by an officer on behalf of the corporation, a summons was issued upon it by a justice who was also a member of the corporation, and it came on for hearing before justices not members of the corporation: *Held* that the summons was improperly issued, and could not be heard.—*Regina v. Gibbon*, L.R. 6 Q.B.D. 168; 29 W.R. 442.

Landlord and Tenant:—

- (xiv.) **Q. B. Div.**—*Bankruptcy of Lessee—Disclaimer—Sub-Lessee.*—When a lessee sub-lets and afterwards becomes bankrupt, and his trustee disclaims, the lessor is entitled to eject the sub-tenant.—*Smalley v. Harding*, L.R. 6 Q.B.D. 371.
- (xv.) **Ch. Div. F. J.**—*Covenant—Beerhouse.*—A tenant covenanted not to use a house as a public house, tavern, or beerhouse: *Held* that the selling beer to be consumed off the premises under a grocers license was not a breach of the covenant.—*Holt v. Collyer*, 44 L.T. 214; 29 W.R. 502.
- (xvi.) **C. A.**—*Lease—Collateral Agreement.*—A railway company let premises, through their agent, to defendant, on a weekly tenancy determinable by a week's notice on either side, and the agent gave defendant a memorandum stating: "You may have the premises as per agreement until the company require to pull them down." The company afterwards required the premises for their own occupation, but did not intend to pull them down, and gave defendant a week's notice to quit: *Held* that the company were entitled to recover possession, and that the memorandum gave defendant no equitable claim against them.—*The Cheshire Lines Committee v. Lewis*, 50 L.J. C.P. 121; 44 L.T. 293.
- (xvii.) **Ch. Div. F. J.**—*Yearly Tenant—Notice to Quit—Disclaimer of Landlord's Title.*—A tenant from year to year who disclaims or repudiates the existence of the relation of landlord and tenant between himself and his landlord, is not entitled to receive notice to quit before ejectment.—*Vivian v. Moat*, 44 L.T. 210; 29 W.R. 504.

Land Clauses Act:—

- (vii.) **Ch. Div. V. C. H.**—*Interim Investment—Application of Dividends—Tenant for Life and Remaindermen.*—A tenant for life of settled lands granted, under a power, repairing leases of the lands. The lands were afterwards taken by a railway company, and the money paid into Court and invested. The income from the purchase-money was in excess of the aggregate rental under the leases: *Held* that the tenant for life was

only entitled to so much of the income as was equal to the aggregate rental under the leases, and that the rest must be accumulated and applied as in *Wootton's Estate* (L.R. 1 Eq. 589; 85 L.J. Ch. 305).—*Re Wilkes's Estate*, L.R. 16 Ch. D. 597; 50 L.J. Ch. 199.

- (viii.) **Ch. Div. V. C. M.**—*Payment out to Official Trustee of Charity Funds—Re-investment—Costs.*—Where the purchase-moneys of lands belonging to a charity which have been taken compulsorily, have been transferred to the official trustee, the purchasers of the lands are not liable to pay the costs of re-investment.—*Re Bishop Monk's Horfield Trust*, 43 L.T. 793; 29 W.R. 462.
- (ix.) **Ch. Div. V. C. M.**—*Re-investment—Redemption of Land Tax—Costs—Special Act.*—A dock company's Act authorised re-investment of purchase-money in the redemption of land tax, discharge of incumbrances, or otherwise in the purchase of lands and hereditaments, and directed that when purchase-moneys should be applied in the purchase of lands and hereditaments the Court might order the company to pay the costs: *Held* that the Court could order the company to pay the costs of re-investment in the purchase of redeemed land tax.—*Ex parte St. Katherine's Hospital, Regent's Park*, 44 L.T. 52; 29 W.R. 495.
- (x.) **Ch. Div. V. C. M.**—*Sale by Trustee—Appointment of Trustee as Surveyor.*—A trustee holding property upon trust for a married woman absolutely for her separate use, is a person enabled to sell and convey under the Lands Clauses Act, 1845. Trustees selling under sec. 7 of the Act appointed one of themselves to act as surveyor on their behalf to make the valuation required by sec. 9: *Held* that this was such an irregularity as to invalidate the proceedings.—*Peters v. Lewes and East Grinstead Rail. Co.*, 50 L.J. Ch. 172; 29 W.R. 422.

Limitations, Statutes of:—

- (v.) **Ch. Div. V. C. M.**—*Tenants in Common—Acknowledgment after Statutory Period—3 & 4 Will. IV., c. 27, s. 34.*—The title of A. and B., tenants in common of land, accrued in 1833. A. then took possession, and till 1864 never accounted to B. From 1864 to 1878 he accounted, and then he claimed to be entitled in severalty under 3 & 4 Will. IV., c. 27, s. 34: *Held* that A. had lost the benefit of the Statutes of Limitation by acknowledging B.'s title after the expiration of the period.—*Sanders v. Sanders*, 44 L.T. 171; 29 W.R. 413.

Lunacy:—

- (iii.) **C. A.**—*Allowance to Poor Relatives.*—A widow had been in the habit, before she became of unsound mind, of making allowances to certain poor relations out of her income. The Court ordered the allowances to be continued from the date when the lunatic was so found.—*Re Mackenzie*, 43 L.T. 681.
- (iv.) **C. A.**—*Death of Lunatic—Costs of Unheard Petition.*—A lunatic having died before the hearing of a petition to confirm the Master's report, the Court made no order on the petition, which was, in the absence of a legal personal representative of the lunatic, ordered to stand over with liberty to apply as to costs when the fund in Court came to be dealt with.—*Re Popham*, 29 W.R. 403.
- (v.) **C. A.**—*Partition—Sale—Conversion—Partition Act, 1868, s. 8.*—Real estate, to a share of which a lunatic was entitled, was sold under the decree in a partition action, and the proceeds paid into Court: *Held* that the proceeds must be treated as realty on the death of the lunatic intestate.—*Re Barker*, 44 L.T. 23.

Master and Servant:—

- (iii.) **C. A.**—*Contract for exclusive Personal Service—Maliciously Procuring Breach of.*—An action lies for maliciously procuring a breach of a contract to give exclusive personal service for a time certain, if damage accrues; though the employer and employed do not stand in the strict relation of master and servant.—*Bowen v. Hall*, L.R. 6 Q.B.D. 333; 44 L.T. 75; 29 W.R. 367.
- (iv.) **C. P. Div.**—*Negligence—Scope of Authority.*—Defendants occupied offices in a house over plaintiff's premises, and a clerk of defendants' went into a private room of one of the firm after his employer had left for the day, and washed his hands in a lavatory there, and left the water tap running, whereby plaintiff's premises were injured. The clerk had no business to enter the room: *Held* that defendants were not liable.—*Stevens v. Woodward*, L.R. 6 Q.B.D. 318; 50 L.J. C.P. 231; 44 L.T. 153; 29 W.R. 506.

Metropolitan Management:—

- (v.) **C. A.**—*Drainage*—25 & 26 Vict., c. 102, s. 6.—Decision of V. C. H. (see *Metropolitan Management* ii., p. 21) affirmed.—*Metropolitan Board of Works v. L. & N. W. Rail. Co.*, 44 L.T. 270.

Mines:—

- (v.) **C. A.**—*Fixtures—Right of Landowner—High Peak Customs.*—Miners under the customs of the High Peak in Derbyshire, are entitled to remove, during the continuance of their mining rights, buildings which they have erected for mining purposes on the surface of the land.—*Wake v. Hall*, 44 L.T. 42.
- (vi.) **Ch. Div. V. C. B.**—*Forest of Dean—Forfeiture of Gale*—1 & 2 Vict., c. 43, s. 29.—When a gale is forfeited for non-user under the provisions of the Forest of Dean Acts, the forfeiture is complete on service of the notice of forfeiture without actual re-entry by the Crown.—*Ex parte Young & Grindell*, 50 L.J. Ch. 221; 43 L.T. 725.

Mortgage:—

- (xvii.) **C. A.**—*Foreclosure Absolute*—3 & 4 Will. IV., c. 27; 1 Vict., c. 28.—An action was brought by a legal mortgagee, within twenty years next after an order of foreclosure absolute, to recover possession of the land: *Held* not to be barred by the Statutes of Limitations, though more than twenty years had elapsed since the legal estate in the land had been conveyed to the mortgagee and since the last payment of principal or interest under the mortgage.—*Heath v. Pugh*, L.R. 6 Q.B.D. 345.
- (xviii.) **Ch. Div. V. C. B.**—*Breach of Trust—Notice.*—Three of four next of kin of an intestate signed a memorandum authorising the fourth next of kin, F., who was also administrator, to borrow upon the security of certain leaseholds belonging to the intestate's estate, such money as F. required for the purposes of the estate, and to charge their shares with the interest. This power was never exercised, and three years afterwards the administration accounts were finally settled. Subsequently F. borrowed money on the leaseholds for his own purposes, the mortgage professing to be executed in pursuance of the authority. No notice of this was given to the other next of kin: *Held* that this mortgage did not affect the shares of the other next of kin, and that they were entitled to an assignment from the mortgagee of their shares of the mortgaged property.—*Jones v. Stöhwasser*, L.R. 16 Ch. D. 577; 29 W.R. 497.
- (xix.) **C. A.**—*Consolidation.*—Two partners who held a lease of a house determinable on their bankruptcy by re-entry, mortgaged it. They afterwards took a third person into partnership and agreed to hold the

equity of redemption in trust for the partnership. The new firm mortgaged another house to the same mortgagee. On the bankruptcy of the firm the lessor determined the lease of the first house and re-entered: *Held* that the mortgagee had no right to consolidate.—*Ex parte Williams, Re Raggett*, L.R. 16 Ch. D. 117; 50 L.J. Ch. 187; 44 L.T. 4; 29 W.R. 314.

(xx.) **P. C.**—*Interest—Mistake—Settled Account re-opened.*—Where a mortgagee's account has been settled on the footing of compound interest with half-yearly rests, under a mistake by both parties, the account was ordered to be re-opened.—*Daniell v. Sinclair*, L.R. 6 App. 181.

(xxi.) **Ch. Div. V. C. B.**—*Mortgagee in Possession—Redemption—Disability*—37 & 38 Vict., c. 57, ss. 3, 7.—The twelve years' bar to redemption suits against a mortgagee in possession prescribed by sec. 7 of Real Property Limitation Act, 1874, is absolute, and is not affected by the provisions as to persons under disability in the third section.—*Foster v. Patterson*, 29 W.R. 463.

(xxii.) **Ch. Div. V. C. M.**—*Mortgagee in Possession—Rent exceeding Interest—Accounts.*—A mortgagee in possession brought a foreclosure action, and in his statement of claim did not allege that interest was in arrear when he took possession. The mortgagor alleged in his defence that the rent received greatly exceeded the interest: *Held* that the accounts must be taken with annual rests.—*Carter v. James*, 29 W.R. 437.

Municipal Law:—

(ix.) **Q. B. Div.**—*Municipal Corporation—Malicious Prosecution—Costs of Constable*—5 & 6 Will. IV., c. 76, s. 82.—The chief constable of a borough having, by direction of the borough magistrates, laid an information against a person for conspiracy, an action for malicious prosecution was brought against him and a verdict recovered for £200: *Held* that the town council could not order payment of the constable's costs out of the borough fund or rate under sec. 82 of 5 & 6 Will. IV., c. 76.—*Regina v. Mayor of Exeter*, L.R. 6 Q.B.D. 135; 44 L.T. 101; 29 W.R. 441.

Negligence:—

(i.) **C. P. Div.**—*Injury—Defective Railings.*—A boy of four years accompanied his sister who went on business to defendant's house. The railings of the steps leading to the house door were defective, and the boy in consequence fell through the railings and was injured: *Held* that an action would not lie against defendant, as there was no concealed danger.—*Burchell v. Hickisson*, 50 L.J. C.P. 101.

(ii.) **C. P. Div.**—*Injury—Driving in Public Thoroughfare.*—A horse drawing a brougham under the care of defendant's coachman, suddenly bolted and swerved on to the footway and injured plaintiff: *Held* no evidence of negligence to go to the jury.—*Manzoni v. Douglas*, L.R. 6 Q.B.D. 145; 50 L.J. C.P. 289; 29 W.R. 425.

Partition:—

(vi.) **Ch. Div. V. C. M.**—*Request for Sale—Married Woman—Conversion*—39 & 40 Vict., c. 17, s. 6.—In a partition action an order for sale of a married woman's share of real estate, when made with her consent or at her request under sec. 6 of Partition Act, 1876, operates as a conversion of her share into personalty. Such request should be made by a person specially authorised to act on her behalf in the action. When her share of the proceeds of sale is under £200, the Court will order it to be paid out to her upon her separate receipt and on affidavit of no settlement, dispensing with her separate examination.—*Wallace v. Greenwood*, L.R. 16 Ch. D. 862; 50 L.J. Ch. 289; 43 L.T. 720.

- (vii.) **Ch. Div. M. R.**—*Sale—Absent Parties*—39 & 40 Vict., c. 17, s. 3.—Where, in a partition action asking for sale, all the parties interested are not before the Court, the judgment order should not be prefaced with an opinion of the Court that a sale is more beneficial for the persons interested than a partition.—*Fragnell v. Batten*, L.R. 16 Ch.D. 360; 50 L.J. Ch. 272; 43 L.T. 749; 29 W.R. 495.

Partnership:—

- (vi.) **H. L.**—*Articles—Covenant not to Assign—Assignment by one Partner to Another*.—Articles of partnership between A., B., and C., contained a clause that it should not be lawful for a partner to assign his share to any person or persons, and any such assignment was declared to have no effect as regarded the partnership. A. agreed to sell to B. his share in the partnership, but A.'s name was retained in the books, and C. knew nothing of the assignment till after A.'s death, when he sought to have it set aside: *Held* that the agreement was legal and did not infringe the articles of partnership.—*Cassels v. Stewart*, L.R. 6 App. 64.

Patent:—

- (iii.) **C. A.**—*Novelty—Infringement—Manufacture Abroad*.—To prove want of novelty in a patented process the prior publication must be that of such precise information as is required in a specification. The sale in England of an article made abroad by a process patented in England is an infringement of the patent.—*Von Heyden v. Neustadt*, 50 L.J. Ch. 126.
- (iv.) **P. C.**—*Renewal—Expired foreign Patent—Patentee's Accounts*.—An English patent may be renewed though a foreign one has been taken out and allowed to expire. A patentee applying for the prolongation of a patent should furnish a full and satisfactory account of all receipts and payments.—*Re Adam's Patent*, L.R. 6 App. 176.
- (v.) **P. C.**—*Renewal—Limitation of Application*.—Prolongation of letters patent for improvements in breaks granted, the new patent being limited to the application of breaks to certain specified machines.—*Re Napier's Patent*, L.R. 6 App. 174.

Poor Law:—

- (vii.) **Q. B. Div.**—*Rate—Refreshment Room—Appeal—Evidence*.—Upon appeal to sessions against a rate in respect of premises occupied as a refreshment room at a railway station, and held at an annual rent under a lease, the appellant may give evidence of his actual receipts and expenditure to show that the value of the premises is less than the rent paid.—*Clark v. Alderbury Assessment Committee*, L.R. 6 Q.B.D. 139; 50 L.J. M.C. 33; 29 W.R. 334.
- (viii.) **Q. B. Div.**—*Settlement—Residence in Charitable Institution*—9 & 10 Vict., c. 66, s. 1; 39 & 40 Vict., c. 61, s. 34.—A pauper lunatic resided for more than three years at a home for penitents in appellant's union, where she was maintained by the funds of the institution. The home was supported by voluntary charitable donations: *Held* that the pauper had acquired a settlement in appellant's union.—*Fulham Guardians v. Isle of Thanet Guardians*, 44 L.T. 188; 29 W.R. 470.

Power of Appointment:—

- (iv.) **Ch. Div. V. C. H.**—*General Gift—Charge of Debts*.—A fund was settled on trust for A. for life, and after her death as she should appoint, with a gift over in default of appointment. A., by her will, gave all her real and personal estate to M. and L., in certain proportions, appointed an executrix, and charged her "said property" with payment of debts.

L. died before A., who died possessed of no other property than the fund subject to her power of appointment: *Held* that the fund ought to be treated as her general personal estate.—*Hinsley v. Ickeringill*, 29 W.R. 500.

Practice:—

- (cii.) **C. P. Div.**—*Acknowledgment by Married Woman—Infant*—3 & 4 Will. IV., c. 74, s. 84.—An indenture of settlement had been ordered by a Vice-Chancellor to be executed by a married woman, an infant. The C. P. Div. allowed the certificate of acknowledgment to be varied by omitting the words, "of full age."—*Re Lacey*, L.R. 6 Q.B.D. 154; 44 L.T. 110; 29 W.R. 442.
- (ciii.) **C. A.**—*Appeal—Case Stated by Quarter Sessions—Judicature Act, 1873, s. 45.*—When the Q. B. Div. in the exercise of its original common law jurisdiction, affirms or quashes an order of sessions, an appeal lies to the Court of Appeal, although no leave to appeal be given.—*Regina v. Savin*, L.R. 6 Q.B.D. 809.
- (civ.) **C. A.**—*Appeal—Enlarging Time—Ord. 57, r. 6.*—Decision of C. P. Div. (see *Practice* lii., p. 62) affirmed.—*Carter v. Stubbs*, L.R. 6 Q.B.D. 116; 50 L.J. C.P. 161; 43 L.T. 746.
- (cv.) **C. A.**—*Appeal—Motion to Set Aside Judgment—Misdirection—Refusal to Withdraw from Jury.*—When on a trial before a jury, the judge refused the defendant's application to withdraw the case from the jury on the ground that there was no evidence, and judgment was given for plaintiff: *Held* that a motion to set aside the judgment should be made to the Divisional Court, and not to the Court of Appeal.—*Clarke v. Midland Rail. Co.*, 44 L.T. 131.
- (cvi.) **C. A.**—*Appeal—Notice by Respondent—Ord. 58, r. 6.*—A respondent who seeks to have an order varied on a point in which the appellant has no interest, cannot proceed by notice under Ord. 58, r. 6; but must give notice of appeal.—*Re Cavander's Trusts*, L.R. 16 Ch. D. 270; 50 L.J. Ch. 292; 29 W.R. 405.
- (cvii.) **C. A.**—*Appeal—Person not a Party.*—In an action by a plaintiff on behalf of himself and all other foreign holders of Peruvian bonds, on a motion to appoint a receiver, L., who was not a party to the action, appeared, but the judge refused to hear him: *Held* that it was not competent for L. to appeal.—*Watson v. Cave*, 44 L.T. 40; 29 W.R. 433.
- (cviii.) **C. A.**—*Appeal—Time—Order in Winding-up.*—Leave to appeal from an order made in a winding-up directing money to be paid to the liquidator, was given after the expiration of the time for appealing, when the principle on which the order appealed from was founded had been over-ruled in another case in the Court of Appeal.—*Re Normanton Iron and Steel Co.*, 50 L.J. Ch. 223; 29 W.R. 300.
- (cix.) **C. A.**—*Appeal—Withdrawal of—Revocation.*—Defendant having given notice of appeal, his solicitor wrote to plaintiff proposing to withdraw the appeal. Plaintiff gave his consent to this, and two days afterwards defendant's solicitor wrote revoking the withdrawal: *Held* that the agreement to withdraw the appeal was binding on defendant, and that if he wished to appeal he ought to apply for leave to give fresh notice of appeal.—*Watson v. Cave* (2), 44 L.T. 117.
- (cx.) **P. D. A. Div.**—*Appeal to House of Lords—Divorce—Decree Nisi.*—It is improper to appeal direct to the House of Lords from a decree nisi for dissolution of marriage; and such an appeal will therefore not operate as a stay of proceedings.—*Robertson v. Robertson*, 44 L.T. 253.

- (oxi.) **Ch. Div. V. C. B.**—*Attachment—Notice of Motion for—Service—Ord. 44, r. 2.*—A notice of motion for a writ of attachment to issue against a party should be served personally.—*Mann v. Perry*, 50 L.J. Ch. 251; 44 L.T. 248.
- (oxii.) **C. A.**—*Contempt—Advertising pendente lite—Champerly.*—To advertise for documentary evidence *pendente lite* is not a contempt of Court; and advertisements addressed to persons having a common trade interest in a subject-matter under litigation, soliciting subscriptions to prosecute the litigation, are not illegal.—*The Plating Co. v. Farquharson*, 29 W.R. 510.
- (oxiii.) **C. A.**—*Costs—Abandoned Appeal.*—C. gave notice of appeal on December 20th but did not set it down. On January 11th he withdrew his notice, and the next day respondent wrote to C. saying that he had delivered briefs, and that unless C. would undertake to pay respondent's costs of the appeal, the usual proceedings would be taken to enforce payment. C. did not answer this letter. An order was made on respondent's motion that the appeal should be dismissed, and that C. should pay the costs of the appeal and of that application.—*Charlton v. Charlton*, L.R. 16 Ch. D. 278; 29 W.R. 406.
- (oxiv.) **Ch. Div. M. R.**—*Costs—Administration Action—Defaulting Executor.*—When two executors are defendants in an administration action, and retain the same solicitor, if one of the executors is indebted to the estate, the other executor will be allowed only his own costs out of the one set allowed, and the taxing-master will be left to appropriate them.—*Smith v. Dale*, 29 W.R. 330.
- (oxv.) **Ch. Div. V. C. B.**—*Costs—Administration—Disputed Accounts.*—The residuary legatee having objected to certain items in accounts of the personal estate furnished by the executors, and they not allowing her objections, she brought an action to have the accounts taken under the direction of the Court. Her objections were sustained, and the executors were ordered to pay the costs of the action.—*Pearce v. Redclyffe*, 44 L.T. 96; 29 W.R. 420.
- (oxvi.) **Ex. Div.**—*Costs—Case stated by Quarter Sessions—Costs to follow Event—Taxation.*—A case stated and signed by a chairman of quarter sessions, after stating the question submitted to the Q. B. Div. contained the clause, "costs to follow the event." The Q. B. Div. quashed the order of quarter sessions and decided in favour of plaintiff, but said nothing as to costs: Held that plaintiff was entitled to the costs incurred in the argument of the case, and also costs of applications to quarter sessions, pending the decision of the Q. B. Div.; and that the taxation of the costs was not a condition precedent to his right to bring an action to recover them.—*Lear v. Botting*, 44 L.T. 58.
- (oxvii.) **Q. B. Div.**—*Costs—Case stated by Quarter Sessions—Civil Proceedings—Ord. 62, r. 2.*—When a case is stated by sessions upon appeal against a poor-rate, the proceeding is a civil proceeding on the Crown side of the Q. B. Div. within Ord. 62, r. 2, and the costs are therefore within the discretion of the Court.—*Clarke v. Alderbury Assessment Committee*, L.R. 6 Q.B.D. 139; 50 L.J. M.C. 33; 29 W.R. 334.
- (oxviii.) **Q. B. Div.**—*Costs—Crown side of Q. B. Div.—Ord. 62, rr. 2, 6.*—Ord. 62 does not enable the Court to give costs in criminal proceedings on the Crown side of the Q. B. Div. on appeal from sessions.—*Regina v. Bawendale*, 29 W.R. 335.
- (oxix.) **P. D. A. Div.**—*Costs—Divorce—Queen's Proctor.*—When a decree nisi is pronounced, and upon the intervention of the Queen's Proctor, the decree absolute is abandoned and also the suit, and there is no answer by the petitioner to the Queen's Proctor's plea, or payment of the costs of

- the suit, the Court will order it to be placed in the reserved list till payment of the Queen's Proctor's costs.—*Collins v. Collins*, 44 L.T. 31.
- (cxx.) **Ch. Div. M. R.**—*Costs—Taxation.*—The costs of all work which is reasonable and not premature are allowable down to the time of any notice which stops the work, and the taxing-master must decide whether such work is reasonable and the time for doing it has arrived.—*Harrison v. Leutnor*, L.R. 16 Ch. D. 559; 50 L.J. Ch. 264; 29 W.R. 393.
- (cxxi.) **C. A.**—*Costs—Taxation—Action for less than £20—19 & 20 Vict., c. 108, s. 36.*—The words "any action" in sec. 36 of County Courts Act Amendment Act, 1856, mean any action in the County Court; therefore, where less than £20 is recovered in the superior Court, a master is wrong in refusing to tax the costs save on the County Court scale. Decision of C. P. Div. (29 W.R. 336) reversed.—*Ex parte Drew, Re Copp*, 50 L.J. C.P. 223; 44 L.T. 48; 29 W.R. 390.
- (cxxii.) **Ch. Div. M. R.**—*Costs—Taxation—Administration in County Court—19 & 20 Vict., c. 108; 38 & 39 Vict., c. 50.*—Where an administration action was brought in a County Court, it was held that taxation could be obtained in the high Court.—*Re Worth*, 50 L.J. Ch. 262; 29 W.R. 371.
- (cxxiii.) **Ch. Div. F. J.**—*Costs—Taxation—Affidavit of Increase.*—The Chancery Div. or its taxing-masters will not adopt the common law practice of requiring an affidavit of increase upon taxation, unless it appears that such a course is advisable under the circumstances of the particular case.—*Smith v. Day*, 44 L.T. 217; 29 W.R. 424.
- (cxxiv.) **C. P. Div.**—*Costs—Taxation—Apportionment—Rules of Court (costs) 1875, Ord. 6.*—Plaintiff having brought an action claiming two separate sums of money in respect of different matters, failed as to one sum, and as to the other claim, succeeded partially; and the order of Court directed that he should recover such costs, as a master might find that he had rightly incurred in recovering the amount for which he got judgment; and that defendant should recover such costs as he had rightly incurred in respect of those points on which he had succeeded: Held on taxation, that each party should be allowed or disallowed such items as applied to the particular parts of the claim on which he had succeeded or failed; and that the general costs should be apportioned. Ord. 6. of Rules of Court (costs) 1875, applies only to objections to selected items, and not when the objection is to the principal of taxation.—*Sparrow v. Hill*, 44 L.T. 146; 29 W.R. 490.
- (cx xv.) **C. P. Div.**—*Costs—Taxation—Higher Scale—Rules of Supreme Court (costs) Ord. 6, r. 3.*—Seem that Ord. 6, r. 3 of Rules of Supreme Court (costs) applies to actions brought in the common law Division of the High Court, and there need be no equitable element in the case in order to warrant the Court in awarding costs on the higher scale.—*Duke of Norfolk v. Arbutnot*, L.R. 6 Q.B.D. 279; 29 W.R. 337.
- (cx xvi.) **C. A.**—*Costs—Taxation—Inspection of Documents—Counsel's Fees.*—In taxing costs as between party and party, the successful party can be allowed no costs of producing documents at the office of his solicitor, or of inspecting his opponent's documents; and when the hearing of an action occupies part of two days, but less time than one whole day, refreshers to counsel ought not to be allowed. The discretion of the taxing-master as to the amount of counsel's fees will only be interfered with in extreme cases.—*Brown v. Sewell*, L.R. 16 Ch. D. 517; 44 L.T. 41; 29 W.R. 295.
- (cx xvii.) **C. P. Div.**—*Costs—Taxation—Short-hand Notes.*—The Court can make an order for the allowance on party and party taxation, of the costs of short-hand notes of evidence at the trial, as part of the costs of a rule

- for a new trial on the ground that the verdict was against the weight of evidence, in a case where such notes were necessary.—*Watson v. G. W. Rail. Co.*, L.R. 6 Q.B.D. 163; 29 W.R. 427.
- (cxxxviii.) **C. A.**—*Costs—Trial by Jury—Ord. 55.*—Where an action has been tried by a jury, application at the trial and good cause shown are conditions precedent to the exercise by a judge of his power to deprive a successful party of his costs.—*Marsden v. Lancashire and Yorkshire Rail. Co.*, 44 L.T. 239.
- (cxxxix.) **C. A.**—*Discovery—Inspection of Documents—Privilege—Ord. 31, rr. 11, 12.*—In answer to an order for discovery of documents, defendants made an affidavit in which documents in their possession were described as "numbered 101 to 110 inclusive, tied up in a bundle, marked with the letter A., and initialed;" and they swore that such documents related only to their own case and objected to produce them: Held that the affidavit was sufficient both for identifying the documents and showing that they were privileged.—*Bewick v. Graham*, 44 L.T. 220; 29 W.R. 436.
- (cxxx.) **Ch. Div. M. R.**—*Hearing—Motion for Judgment—No Pleadings.*—Defendant in a foreclosure action had given notice that he did not require a statement of claim, and plaintiff did not deliver one and set down the action to be heard short on motion for judgment. Defendant opposed the judgment and the action was ordered to go into the general paper, time being allowed for filing affidavits on both sides.—*Wilmott v. Young*, 29 W.R. 413.
- (cxxxii.) **Ch. Div. M. R.**—*Information under Marriage Act, 1823, s. 23—Form of Judgment—Appearance of Attorney-General.*—Minutes of judgment in an information under the Marriage Act, 1823, should follow the words of the Statute. The Attorney-General and relator need not appear separately on the information.—*Attorney-General v. Teather*, 43 L.T. 749; 29 W.R. 347.
- (cxxxiii.) **Ch. Div. M. R.**—*Ne exeat Regno—Debtors Act, 1869, s. 6.*—A writ of *ne exeat regno* can be granted only in those cases which fall within the exceptions contained in sec. 6 of the Debtors Act, 1869.—*Hands v. Hands*, 43 L.T. 750.
- (cxxxiv.) **C. A.**—*Order for Custody of Infant until further Order—Application to Vary—36 & 37 Vict., c. 12, s. 1.*—Where an order is made under sec. 1 of Infants Custody Act, 1873, on the mother's petition, giving her the custody of an infant till further order, an application to vary the order should be by motion before the judge who made the order. Such a motion can be made by the respondent to the original petition.—*Re Holt*, L.R. 16 Ch. D. 115; 29 W.R. 341.
- (cxxxv.) **Q. B. Div.**—*Parties—Third Party Notice—Application for Directions—Ord. 16, rr. 18, 21.*—When a third party is cited by a defendant under Ord. 16, r. 18, and defendant applies for directions as to the mode of trial under r. 21, the Court or judge may, at any stage of the proceedings, inquire into the facts of the case for the purpose of seeing whether such directions should be given or not, and may refuse to make an order giving such directions where it is clear that plaintiff's case would otherwise be prejudiced and delayed.—*Schneider v. Batt*, 44 L.T. 142.
- (cxxxvi.) **Ch. Div. V. C. B.**—*Pleading—Amendment—Patent Action.*—Where defendant in a patent action applies after notice of trial for leave to

- amend his particulars of objections, leave will only be granted on certain terms as to costs, and plaintiff will have time to elect to discontinue.—*Edison Telephone Co. v. India Rubber, &c., Works Co.*, 29 W.R. 496.
- (cxxxvii.) **Ch. Div. M. R.**—*Pleading—Amendment of Writ—Affidavit in support—Cross-examination.*—It is unnecessary, except in special circumstances, to make an affidavit in support of an application for leave to amend a writ of summons, and if such affidavit is made it is improper to cross-examine on it with a collateral object.—*Conybeare v. Lewis*, 44 L.T. 242; 29 W.R. 391.
- (cxxxviii.) **Ch. Div. F. J.**—*Pleading—Counter-claim—Judicature Act, 1873, s. 24, sub-sec. 3.*—A counter-claim can extend to a right of action arising after the date of the original writ.—*Beddall v. Maitland*, 44 L.T. 248; 29 W.R. 484.
- (cxxxix.) **C. A.**—*Pleading—Recovery of Land—Ord. 19, r. 15.*—The mere statement by a defendant in an action for the recovery of land that he is in possession puts the plaintiff to the proof of his title.—*Danford v. McNulty*, 50 L.J. Ex. 294; 29 W.R. 437.
- (cxl.) **Ch. Div. V. C. M.**—*Sale under Direction of Court—Private Contract—Re-opening—30 & 31 Vict., c. 48, s. 7.*—The principles of the Sale of Land by Auction Act, 1867, apply as well to sales by private contract under the direction of the Court, as to sales by auction.—*Newman v. Hook*, L.R. 16 Ch. D. 561; 50 L.J. Ch. 205; 44 L.T. 17; 29 W.R. 279.
- (cxli.) **Ch. Div. F. J.**—*Service of Writ—Indorsement of Date—Extension of Time for—Ord. 9, r. 13.*—The Court has power to extend the time for indorsing on a writ of summons the date of the service, after the expiration of the time limited for such indorsement by Ord. 9, r. 13.—*Hastings v. Hurley*, 44 L.T. 176; 29 W.R. 440.
- (cxlii.) **C. A.**—*Sheriff's Officer—Possession Money—Action against Solicitor for.*—The solicitor for a judgment creditor handed the writ to the sheriff for execution, but did not instruct him to employ any particular officer: Held that the officer appointed by the sheriff could not maintain an action against the solicitor for his fees and possession money.—*Royle v. Busby*, L.R. 6 Q.B.D. 171; 50 L.J. Q.B. 196; 43 L.T. 717; 29 W.R. 315.
- (cxliii.) **Ch. Div. V. C. H.**—*Special Case—Motion for Judgment—Ord. 34, r. 1.*—When, in a special case stated under Ord. 34, r. 1, the answers to the questions in effect dispose of the action, the action should be set down for trial on motion for judgment, and the judgment taken upon the declarations following the answers.—*Harrison v. Cornwall Minerals Rail. Co.*, 29 W.R. 258.
- (cxliv.) **Ch. Div. M. R.**—*Substituted Service—Absconding Defendant—Ord. 9, r. 2.*—Leave for substituted service of writ on a defendant should not be given unless there is a probability of defendant being thereby reached.—*Wolverhampton Banking Co. v. Bond*, 43 L.T. 721.
- (cxlv.) **Ch. Div. F. J.**—*Tenant pur Autre Vie—Production of Cestui-que-vie—6 Anne, c. 18.*—Assignees of leaseholds, held for a term determinable on the death of a tenant for life, may, at the instance of those entitled in reversion expectant on the death of the tenant for life, be called upon to produce him.—*Ex parte Castledine, Re Hall*, 29 W.R. 521.
- (cxlvi.) **Ch. Div. M. R.**—*Transfer of Action—Winding-up of Company—Ord. 51, r. 1a.*—When an order for winding up a company has been made by one judge of the Chancery Div., and an action against the company is pending before another judge of the same division, application to transfer the action to the judge who made the winding-up order must be made to the Lord Chancellor or his secretary.—*Re Madras Irrigation and Canal Co.*, 29 W.R. 520.

- (cxlvii.) **Ch. Div. V. C. B.**—*Transfer of Action—Winding-up of Company—Ord. 51, r. 2a.*—The transfer to a judge of the Chancery Div. under Ord. 51, r. 2a of an action pending in another division can be made on an *ex parte* motion.—*Re United Kingdom Telegraph Co.*, 29 W.R. 332.
- (cxlviii.) **Ch. Div. M. R.**—*Trial by Jury—Ord. 36, r. 26.*—The question whether lands acquired by a railway company are superfluous lands within sec. 127 of the Lands Clauses Act, 1845, is one which can be more conveniently tried without a jury.—*Smith v. North Staffordshire Rail. Co.*, 44 L.T. 85.

Principal and Agent:—

- (vi.) **C. A.**—*Accounts—Commission Agent—Consignor.*—Decision of M. R. (see *Principal and Agent* i., p. 30) affirmed.—*Kirkham v. Peel*, 44 L.T. 195.
- (vii.) **Ch. Div. M. R.**—*Commission—Opening Accounts—Overcharges.*—In dealings between principal and agent, one case of proved fraudulent overcharge is sufficient reason for opening settled accounts.—*Williamson v. Barbour*, 50 L.J. Ch. 147.

Principal and Surety:—

- (iii.) **Ch. Div. V. C. B.**—*Joint and Several Promissory Note.*—Plaintiffs lent to B. £1000 upon the security of a joint and several promissory note by B. and defendant, payable on demand, and on deposit of deeds of property belonging to B., with a memorandum signed by him that the deeds were deposited as security for any general balance not exceeding £1000 which might be due to plaintiffs from him, and an undertaking by B. to execute a legal mortgage of the property: Held that defendant was liable upon the note as principal, and not merely as surety for B.—*York City and County Banking Co. v. Bainbridge*, 43 L.T. 732.

Probate:—

- (v.) **P. D. A. Div.**—*Interlineation after Execution—Re-execution.*—Immediately after execution of her will by testatrix, an interlineation was added which was approved by testatrix, and the witnesses then placed their initials in the margin opposite the interlineation: Held that there had been no re-execution and the interlineation must be omitted from probate.—*In the goods of Shearn*, 50 L.J. P.D.A. 15; 43 L.T. 736; 29 W.R. 445.
- (vi.) **P. D. A. Div.**—*Two Wills—No Revocation.*—Deceased made two wills, by the first giving all his property to his wife and appointing her sole executrix; by the second giving his household furniture and cash to his wife for life and after her death to her sister, whom he appointed joint executrix with his wife. The second will contained no revocation clause and no disposition of real estate or residuary personalty. Probate was granted of both wills, after notice of the application for probate had been served on the heir-at-law.—*In the goods of Hartley*, 50 L.J. P.D.A. 1; 29 W.R. 356.
- (vii.) **P. D. A. Div.**—*Will made in India—Proof in Scotland.*—A. died in India, leaving a will wherein H. was a legatee. His personal estate was nearly all in Scotland and his executors proved his will there. The Court refused to make an order on H.'s application for A.'s executors to prove the will in England, or to grant administration with the will annexed to H.—*In the goods of Ewing, Hope v. Ewing*, 50 L.J. P.D.A. 11; 44 L.T. 278; 29 W.R. 474.
- (viii.) **P. D. A. Div.**—*Will of Married Woman—Codicil during Widowhood—Incorporation.*—A married woman having a power of appointment under her settlement, made a will whereby she appointed an executor. After

her husband's death, she duly executed a codicil upon the same paper as the will. The codicil began. "This is a codicil to the last will of me" &c.: Held that the will was sufficiently incorporated in the codicil and should be admitted to probate therewith.—*In the goods of Heathcote*, 44 L.T. 280; 29 W.R. 356.

- (ix.) **P. D. A. Div.**—*Will of Married Woman—Husband's Consent*.—A married woman executed a will by which she appointed her husband and brother executors, and on the same day the husband signed a paper acknowledging that two sums of money were the separate estate of the wife to dispose of as she might think fit. After her death, the husband died before probate was granted. The Court granted probate to the surviving executor.—*In the goods of Cooper*, 29 W.R. 444.
- (x.) **P. D. A. Div.**—*Will of Married Woman—Power of Appointment—Judicature Act, 1873, s. 24*.—*Semble*, where a question of the valid execution of a power arises upon a will already before the Probate Div., that question will be determined before that division.—*Phillips v. Jenkins*, 44 L.T. 281.

Public Health:—

- (vii.) **Ex. Div.**—*Local Authority—Abating Nuisance—38 & 39 Vict., c. 55, s. 94*.—A local sanitary authority required the applicant under sec. 94 of the Public Health Act, 1875, to abate a nuisance and erect a particular kind of closet: Held that they had no power to prescribe the erection of any particular closet.—*Ex parte Whitchurch*, 29 W.R. 507.
- (viii.) **Ex. Div.**—*Local Authority—Contract exceeding £50—38 & 39 Vict., c. 55, ss. 174, 200*.—A medical man agreed verbally with a committee appointed by an urban sanitary authority under sec. 200 of Public Health Act, 1875, to attend cases of scarlet fever at the rate of 5s. 3d. per tent per day, and attended until the amount due was nearly £100: Held that he could not recover this amount either from the committee or from the members personally, nor from the urban authority.—*Eaton v. Basker*, L.R. 6 Q.B.D. 201; 50 L.J. Ex. 194; 44 L.T. 60; 29 W.R. 398.
- (ix.) **C.A.**—*Paving Rate—Adjoining Owner—Former Decision—Res Judicata*.—A local board took out a summons to compel defendant to pay his contribution towards sewerage and paving a road, and it was dismissed by the justices on the ground that the road was a highway. Further work having been done to the road the board took out a fresh summons against defendant: Held that the matter was not *res judicata*, and that the former decision of the justices did not estop the local board from claiming the expenses claimed on the second summons.—*Regina v. Hutchins*, L.R. 6 Q.B. D. 300; 50 L.J. M.C. 35.
- (x.) **Q. B. Div.**—*Repair of Street—Notice to Owner—Private Improvement Expenses—Recovery—11 & 12 Vict., c. 63, 38 & 39 Vict., c. 55*.—A notice by a local board requiring an owner to execute certain repairs, and that in default the board will proceed itself to execute them, and declaring the expenses thereby incurred to be private improvement expenses, binds the board, on the owner's default, to treat the expenses as private improvement expenses, and precludes them from recovering the expenses summarily.—*Gould v. Bacup Local Board*, 44 L.T. 103; 29 W.R. 471.

Railway:—

- (xii.) **Q. B. Div.**—*Carrier—Liability—Owner's Risk Rate—Misdelivery*.—A railway company forwarded goods at a reduced rate on the terms that they were to be solely at the risk of the sender, with the exception that the company should be responsible for any wilful act or default of the company or its servants, for any fraud or theft by the servants, and for

collision of trains: *Held* that the company was liable for damages arising from delay in delivering goods caused by their being sent to the wrong person.—*Goldsmith v. Great Eastern Rail. Co.*, 44 L.T. 181.

- (xiii.) **C. P. Div.**—*Liability to fence Adjoining Lands—Release by Owners—Occupier*—8 & 9 Vict., c. 20, s. 68.—Plaintiff was yearly tenant of land belonging to G., when in 1847, part of the land was taken by a railway company under their statutory powers, and the company paid G. compensation in lieu of all accommodation works, including the right to have his land fenced off from the railway. The company, however, made a fence, but it was not kept in repair, and in consequence plaintiff's cow was killed: *Held* that the company was liable.—*Corry v. Great Western Rail. Co.*, L.R. 6 Q.B.D. 237.
- (xiv.) **C. A.**—*Passenger Duty—Sleeping Carriages*—5 & 6 Vict., c. 79, s. 2.—Decision of Ex. Div. (see *Railway* vii., p. 32) affirmed.—*Attorney-General v. L. & N. W. Rail. Co.*, L.R. 6 Q.B.D. 216; 50 L.J. Ex. 170; 44 L.T. 236; 29 W.R. 346.
- (xv.) **C. A.**—*Railway Commissioners—Jurisdiction*—36 & 37 Vict., c. 48.—*Held* that the Railway Commissioners have authority to make an order directing a railway company to make certain structural alterations necessary in order to render reasonable facilities for carrying on the traffic undertaken by them; and that a general demurrer to a declaration in prohibition against the Commissioners should be allowed, although some of the works ordered by the Commissioners to be executed were improper.—*South-Eastern Rail. Co. v. Railway Commissioners*, 50 L.J. Q.B. 201; 44 L.T. 203.
- (xvi.) **H. L.**—*Transfer of Railway—Local Act—Construction*.—A local Act provided that the D. line, of which the C. company were proprietors and in respect of which they were liable to pay certain half-yearly dividends to shareholders, should from 1st February, 1880, vest in the C. company, and N. B. company jointly, and that from the vesting period the N. B. company should pay to the C. company every 1st of March and 1st of September a sum equal to half the aggregate of the following half-yearly dividends for which the C. company were liable: *Held* that the time for making the first of such payments by the N. B. company did not, under the circumstances, occur till the 1st of September next after the transfer of the line.—*Caledonian Rail. Co. v. North British Rail. Co.*, L.R. 6 App. 114.

Revenue:—

- (iii.) **C. A.**—*Inhabited House Duty—Exemption—Care-taker*—32 & 33 Vict., c. 14, s. 11.—A clerk employed at a salary of £150 a year occupied as care-taker, with his family and a servant, the upper part of a house otherwise used only for trade purposes: *Held* that this was not an occupation within the exemption contained in sec. 11 of 32 & 33 Vict., c. 14.—*Yewens v. Noakes*, 50 L.J. Ex. 132; 44 L.T. 128.
- (iv.) **C. A.**—*Succession Duty—Predecessor*—16 & 17 Vict., c. 51, s. 2.—Decision of Ex. Div. (see *Revenue* ii., p. 33) affirmed.—*Attorney-General v. Dowling*, L.R. 6 Q.B.D. 177; 50 L.J. Ex. 192; 44 L.T. 234; 29 W.R. 327.

Settlement:—

- (xi.) **Ch. Div. M. R.**—*Executory Settlement—Power of Appointment to Children*.—In making a settlement of property directed to be settled on the wife and children of testatrix's son, the Court has jurisdiction to give to the husband a life interest and a power to appoint amongst the children

jointly with the wife during coverture and alone if he survived her.—*Gowan v. Gowan*, 50 L.J. Ch. 248.

- (xii.) **Ch. Div. V. C. M.**—*Protector to Settlement—Trustees—Death—3 & 4 Will. IV., c. 74, s. 22.*—Trustees of the real estate under a will were appointed protectors of the estates tail created by the will. They all died, and new trustees were appointed by the Court: *Held* that the tenant for life had become protector to the settlement, and that he and the first tenant in tail could convey.—*Clarke v. Chamberlain*, L.R. 16 Ch. D. 176; 29 W.R. 415.
- (xiii.) **Ch. Div. V. C. B.**—*Settled Estates—Costs of Action for Benefit of Inheritance—40 & 41 Vict., c. 18, s. 17.*—Where trustees of a settlement held a sum of money, the proceeds of enfranchisement of copyholds of which the freehold and inheritance were comprised in the settlement, the Court gave its sanction to their expending this sum in defraying the costs of actions brought by the tenant for life for protecting the inheritance and also those which might be incurred in a pending appeal.—*Re Earl de la Warr's Settled Estates*, L.R. 16 Ch. D. 587; 44 L.T. 56; 29 W.R. 350.
- (xiv.) **Ch. Div. V. C. M.**—*Woman Past Childbearing—Payment out of Settled Fund.*—A woman aged 52, who had been a widow for twenty-four years, was absolutely entitled in default of children, to a fund in the hands of trustees: *Held*, on petition for advice, that the trustees were justified in paying it over to her.—*Re Taylor's Settlement Trusts*, 43 L.T. 795; 29 W.R. 350.

Ship:—

- (xxxii.) **Q. B. Div.**—*Agreement to Transfer Ship—Registration—17 & 18 Vict., c. 104, s. 55.*—A written agreement to sell a ship does not require to be registered under the provisions of sec. 55 of the Merchant Shipping Act, 1854.—*Baithyany v. Bouch*, 44 L.T. 177.
- (xxxiii.) **C. A.**—*Authority to Sell Cargo.*—The master of a ship is not justified in selling cargo in a wreck unless he is compelled by absolute necessity, and there is no possibility of forwarding the cargo to its destination.—*Atlantic Mutual Marine Insurance Co. v. Huth*, L.R. 16 Ch. D. 474; 44 L.T. 67; 29 W.R. 387.
- (xxxiv.) **C. P. Div.**—*Charter-party—Demurrage.*—A charter-party provided that a ship was to load a cargo at certain rates varying according to the place of loading, and discharge at M. at the rate of 300 tons per day, demurrage to be paid over and above the said days at a certain rate. The ship loaded at a less rate than that prescribed by the charter-party, but discharged at a greater rate: *Held* that in calculating the demurrage, the days for loading and unloading must be kept separate.—*Marshall v. Bolckow*, L.R. 6 Q.B.D. 231.
- (xxxv.) **H. L.**—*Charter-party—Demurrage—Obligation to Provide Place of Discharge.*—Plaintiffs agreed by charter-party with defendant that their ship should proceed to a port in the Baltic, load timber, and proceed to London to the S. C. docks (which are private), or as near thereto as she might safely get, and deliver the same on being paid freight, the cargo to be received at port of discharge as fast as the ship could deliver. Defendant was unable to obtain a berth in the S. C. docks for unloading, as the docks were full. Plaintiffs brought the ship to London, and being refused admission to the docks they unloaded the ship themselves by lighters: *Held* that defendant was liable for demurrage.—*Dahl v. Nelson*, L. R. 6 App. 38
- (xxxvi.) **C. A.**—*Insurance—Concealment of Material Fact.*—The concealment by the assured at the time of effecting a marine policy of insurance, of

a fact which is material to enable an underwriter to judge whether he shall accept the risk, and at what rate, will vitiate the policy, although the fact may not be material with regard to the risk incurred.—*Rivas v. Gerussi*, L.R. 6 Q.B.D. 222; 50 L.J. Ex. 176; 44 L.T. 79.

(xxxvii.) **C. A.**—*Insurance—Valued Policy—Compensation for Excess Value.*—Decision of C. P. Div. (see *Ship* xxvii., p. 71.) reversed.—*Burnand v. Rodocanachi*, 50 L.J. C.P. 284; 29 W.R. 460.

(xxxviii.) **Q. B. Div.**—*Necessaries—Managing Owner—Authority to bind other Owners.*—W., the owner of certain shares in a ship, was registered as managing owner, and, without the consent of defendant, who was registered owner of other shares, sent the ship on a voyage. Defendant did not participate in the adventure, and did not know that W. was registered as managing owner: Held that an action would not lie against defendant for necessities supplied to the ship previous to the voyage on W.'s order without defendants knowledge.—*Frazer v. Cuthbertson*, L.R. 6 Q.B.D. 93; 50 L.J. Q.B. 277; 29 W.R. 896.

(xxxix.) **P. D. A. Div.**—*Salvage—Rate of Contribution.*—The general rule that property on board a salvaged ship, if liable to contribute to an award of salvage, must do so in proportion to its value, is to be followed, though part of such property consists of specie.—*The Longford*, 44 L.T. 254; 29 W.R. 491.

(xl.) **P. D. A. Div.**—*Wages—Assessors—Dismissal for Misconduct.*—In an action of wages which involved questions as to the state of the machinery of a steamship, engineer assessors were summoned to assist the Court. Circumstances in which a shipmaster was held justified in discharging his engineer abroad, on the ground of misconduct.—*The Marina*, 29 W.R. 508.

Solicitor:—

(viii.) **C. J. B.**—*Lien for Costs—Solicitor for Mortgagee acting for Mortgagor.*—A solicitor who was employed by, and held the title deeds for a mortgagee, subsequently acted for the mortgagor. On the bankruptcy of the latter, the solicitor claimed a lien on the deeds belonging to the mortgagees for costs incurred on behalf of the mortgagor: Held that the solicitor had no lien upon the deeds as against the trustee in bankruptcy of the mortgagor.—*Ex parte Fuller, Re Long*, L.R. 16 Ch. D. 617; 44 L.T. 65; 29 W.R. 448.

(ix.) **Ch. Div. M. R.**—*Taxation of Bill—Amending after Delivery.*—A solicitor cannot, upon objection being taken to the charges made in a bill of costs delivered by him, avoid taxation by withdrawing the bill and substituting another, unless the charges were inserted by mistake.—*Re Holroyde and Smith*, 43 L.T. 722.

Telegraph:—

(i.) **Ex Div.**—*Telephone—26 & 27 Vict., c. 112, s. 3; 31 & 32 Vict., c. 110; 32 & 33 Vict., c. 73.*—Held that the Edison telephone was a telegraph within the meaning of the Telegraph Acts, 1863 and 1869; and that conversations held by subscribers through the telephones of the defendant company were infringements of the exclusive privilege of transmitting telegrams granted to the Postmaster-General by the Act of 1869.—*Attorney-General v. Edison Telephone Co.*, L.R. 6 Q.B.D. 244; 50 L.J. Ex. 145; 43 L.T. 697; 29 W.R. 428.

Trade Mark:—

(viii.) **Ch. Div. F. J.**—*Registration—Opposed Application.*—Defendants in an action for infringement of trade-mark, applied for registration of the

trade-mark which they had been restrained by injunction in the action from using. The Court ordered that the matter should be brought before it by motion by applicants to proceed with the registration, with liberty to either party to use the evidence in the action.—*Re Johnston's Trade Mark*, 43 L.T. 672.

(ix.) **Ch. Div. M. R.**—*Registration—Rectification of Register.*—A trade-mark belonging to a firm, was by mistake registered in the name of one of the partners. This partner died: *Held* that the proper course to take was for the firm to take an assignment of the trade-mark from the legal personal representative of the deceased partner.—*Re Farina's Trade Mark*, 44 L.T. 99; 29 W.R. 391.

(x.) **Ch. Div. V. C. H.**—*Registration—Rectification of Register.*—The powers given to the Court by the Trade Marks Registration Acts to rectify the register of trade-marks, are only exercisable where there has been some error in the registration, and not when a change is desirable in consequence of a devolution of title.—*Re Ward, Sturt, and Sharp's Trade Marks*, 44 L.T. 97; 29 W.R. 395.

(xi.) **Ch. Div. M. R.**—*Trade—Name—Legal Fraud—Injunction—Held* that a company that had acquired the business of the Guardian Horse and Vehicle Assurance Association, and had added to it fire and life assurance business must be restrained at the suit of the plaintiffs from carrying on business as the Guardian and General Assurance Company.—*Guardian Fire and Life Assurance Co. v. Guardian and General Insurance Co.*, 50 L.J. Ch. 253; 43 L.T. 791.

Trustee:—

(xii.) **Ch. Div. V. C. B.**—*Breach of Trust—Liability of Co-trustee—Indemnity Clause.*—Testator authorized his trustees to carry on his business, and declared that each trustee should be answerable only for his own defaults, and that any trustee who should do any act enabling his co-trustee to receive moneys for the purpose of the will should not be obliged to see to the application thereof, nor be made responsible by express notice of this application. After testator's death the business was, with the consent of the beneficiaries, carried on by one trustee, P., who was authorised by his co-trustee to draw on the banking account of the trust estate. P. drew out moneys and misappropriated them: *Held* that the co-trustee was not liable.—*Pass v. Dundas*, 43 L.T. 665; 29 W.R. 332.

(xiii.) **Ch. Div. F. J.**—*Leaseholds—Tenant for Life in Receipt of Rents—Repairs.*—Leaseholds were left to trustees on trust to pay the rents to defendant for life, and after her death on trust for her children. Defendant received the rents herself, but did not keep the premises in repair, thereby incurring a risk of forfeiture: *Held* that the trustees were entitled to pay for the repairs required out of the rents, and to have a receiver appointed; and that they were not bound to accept an indemnity from defendant against any liability which they might incur, in case of the houses not being repaired.—*Fowler v. Odell*, 44 L.T. 99.

(xiv.) **Ch. Div. V. C. H.**—*Liability to Account—Rate of Interest.*—A trustee under a will, having retained a fund in his own hands which was directed to be paid to his son on his attaining twenty-one, without explaining to his son his rights with regard to the trust fund, and having mixed the fund with his own moneys: *Held* that he must be charged with compound interest at the rate of four per cent. per annum, with half-yearly rests, on the whole fund from the time of his son attaining twenty-one.—*Emmet v. Emmet*, 44 L.T. 172; 29 W.R. 464.

- (xv.) **C. A.**—*Lunatic Trustee—Cestui-que-trust Absolutely Entitled.*—Where a sole trustee becomes lunatic, the Court will not vest the trust property in a *cestui-que-trust*, although *sui juris* and absolutely entitled.—*Re Holland*, 50 L.J. Ch. 271; 29 W.R. 449.
- (xvi.) **C. A.**—*Lunatic Trustee—New Trustee—Vesting Order*—13 & 14 Vict., c. 60, s. 5.—Where one of several trustees becomes lunatic, the Court will require a new trustee to be appointed in the place of the lunatic before making a vesting order under the Trustee Act, 1850, s. 5.—*Re Nash*, L.R. 16 Ch. D. 503; 44 L.T. 40; 29 W.R. 294.
- (xvii.) **Ch. Div. F. J.**—*Severance of Trusteeship.*—Testator gave freeholds and leaseholds by several specific gifts on similar trusts for several classes of persons respectively, with cross remainders. Many of the *cestuis-que-trust* were not *sui juris*: Held that separate trustees of separate parts of the property might be appointed.—*Cooper v. Todd*, 29 W.R. 502.

Vendor and Purchaser:—

- (xiv.) **Ch. Div. V. C. B.**—*Specific Performance—Order in Chambers*—37 & 38 Vict., c. 78, s. 9.—A purchaser applied by summons in chambers under the Vendor and Purchaser Act, 1874, to obtain an opinion of the judge on a point in dispute, and that the vendor should answer certain requisitions. The vendor not having complied with the order made on the summons, the purchaser instituted an action for specific performance: Held that he was not entitled to bring the action, but must go back to chambers to enforce compliance with the order.—*Thompson v. Ringer*, 29 W.R. 520.

Water:—

- (ii.) **Ch. Div. V. C. H.**—*Artificial Stream—Prescription—Riparian Rights.*—Plaintiff claimed exclusive use of the water of a stream which flowed through defendant's land, on the ground that the watercourse through defendant's land was artificial and constructed from time immemorial for sole benefit of plaintiff and his predecessors: Held that as there was no evidence when the artificial part of the water-course was made, it must be deemed to be a natural stream, or else to have been made so as to give all the rights of a riparian proprietor to defendant and his predecessors.—*Roberts v. Richards*, 50 L.J. Ch. 297; 44 L.T. 271.

Will:—

- (xi.) **Q. B. Div.**—*Attesting Witness—Marriage of Devisee after Attestation to*—1 Vict., c. 26, s. 15.—The marriage after attestation of a will of a devisee to the attesting witness, does not affect the validity of the devise.—*Thorpe v. Bestwicke*, L.R. 6 Q.B.D. 311; 44 L.T. 180.
- (xli.) **C. A.**—*Construction—Bequest towards support of Children.*—Testator gave his niece an annuity of 8s. a week towards the support and maintenance of her two children until they should attain twenty-one years, and in a codicil referred to his will as "my said will in my niece's favour": Held that the niece was entitled to the annuity for her life.—*Farr v. Hennis*, 44 L.T. 202.
- (xlii.) **Ch. Div. V. C. H.**—*Construction—Gift of Residue—Intestacy.*—Testator directed his trustee to stand possessed of his residuary estate upon trust, as to one-seventh for his daughter for life, remainder to her children who should attain twenty-one, but if there should be no such child he directed the trustees to apply the share as part of his residuary estate. He afterwards declared trusts of the other six shares of the residue. The daughter survived the testator but left no children: Held that the daughter's share was undisposed of by the will.—*Re Savage's Trusts*, 50 L.J. Ch. 131.

- (xliii.) **Ch. Div. M. R.**—*Construction—Gift to Class—Persona Designata—Lapse.*—Testator gave real and personal estate in trust to convert and divide equally amongst all the children of R., the child of W. and L. his wife, and A. a widow. L. was dead at date of will and the child of W. and L. predeceased testator: *Held* that the share of this child lapsed.—*Wilson v. Atter*, 44 L.T. 240; 29 W.R. 480.
- (xliv.) **Ch. Div. V. C. H.**—*Construction—Gift to Decendant's who shall Bear Surname—Remoteness.*—Bequest to trustees in trust for testatrix's brother R. for life, and after his death, for his son J. for life, and after death of R. and J. upon trust for any immediate or direct descendants of R. or J. who should bear the name of R. for life; and from and after his or her decease in case of failure of any such immediate or direct descendants upon trust for certain charities, with a condition of forfeiture on abandoning the name of R.: *Held* that the gift to descendants included descendants who assumed the name of R., and was void for remoteness, and that the gift over to charities also failed.—*Repington v. Roberts*, 50 L.J. Ch. 265; 44 L.T. 300.
- (xlv.) **Ch. Div. M. R.**—*Construction—Hotchpot—Interest on Advances.*—Testator gave his residuary estate to his widow for life, and then among his children equally, directing sums advanced to them to be brought into hotchpot: *Held* that interest on the advances should be calculated from the death of the tenant for life.—*Rees v. George*, 44 L.T. 241; 29 W.R. 301.
- (xlvi.) **Ch. Div. V. C. M.**—*Construction—Legacies—Priority.*—Testator gave £500 to his wife to be paid immediately after his death, and he gave his residuary estate to trustees upon trust to convert, and in the first place to raise two sums of £12,000 and £5,000 and invest the same and pay the income to certain persons for life and after their respective deaths the same sums were to fall into the residue. He then gave several other legacies and divided the residue: *Held* that the legacy of £500 had priority over everything else, and that the sums of £12,000 and £5,000 had priority over the general legacies.—*Wells v. Burwick*, 50 L.J. Ch. 241; 44 L.T. 49.
- (xlvii.) **C. A.**—*Construction—Mixed Fraud—Payment pro rata—Exoneration of Mortgaged Estates—17 & 18 Vict., c. 113.*—Testator gave his residuary real and personal estate to trustees on trust to convert, and thereout to pay debts and funeral expenses; and after the death of his wife he gave so much of the fund as consisted of pure personalty to charities. He appointed executors and gave a legacy to each of them: *Held* that the executor's legacies were primarily payable out of the personalty, and that mortgages on the real estate must be paid out of the proceeds of the mortgaged estates.—*Elliot v. Dearsley*, L.R. 16 Ch. D. 322; 44 L.T. 198; 29 W.R. 494.
- (xlviii.) **Ch. Div. V. C. M.**—*Construction—Nephews and Nieces.*—Testator devised certain property to "my niece, M. W.," and then gave other property to his nephews and nieces. He left nephews and nieces of his own, and also of his wife, M. W. being a niece of his wife: *Held* that the words "nephews and nieces" included only his own nephews and nieces.—*Merrill v. Morton*, 50 L.J. Ch. 249; 43 L.T. 750; 29 W.R. 394.
- (xlix.) **C. A.**—*Construction—Power of Appointment—Sale and Reinvestment.*—Decision of M. R. (see *Will* xxii., p. 42) affirmed.—*Chandler v. Ppcock*, 44 L.T. 115.
- (l.) **Ch. Div. V. C. H.**—*Construction—Power of Sale—Determination of.*—Testator gave residuary estate to trustees upon trust for his wife for life, and after her decease to pay, transfer, or assign the same to his two daughters in equal shares as tenants in common, with a gift over in favour of issue of the daughters in certain events which did not happen,

and for the purpose of division he empowered his trustees to sell his residuary estate. The daughters survived the testator and his wife: *Held* that the power of sale had determined.—*Peters v. Lewes and East Grinstead Rail. Co.*, 50 L.J. Ch. 172; 29 W.R. 422.

- (li.) **C. A.**—*Construction—Remoteness—Executory Limitations.*—*Held*, reversing the decision of V. C. M. (see *Will* ix., p. 41), that the direction to convey to the first son of W., who should attain twenty-five, was an executory limitation, and therefore void for remoteness.—*Abbiss v. Burney*, 44 L.T. 267; 29 W.R. 449.
- (lii.) **Ch. Div. V. C. M.**—*Construction—Restraint on Alienation.*—Testator gave property to trustees on trust, after the death of his wife, to divide it into four parts and pay the income of one part to each of his four children during their lives, and on the death of any of them, to pay the share of such child as such child should by deed or will appoint, with a provision that in case any of his children's shares should be alienated during his or her lifetime, then all dispositions in favour of such child should be void: *Held* that the restraint on alienation was void.—*Marshall v. Aizlewood*, 43 L.T. 752; 29 W.R. 414.
- (liii.) **Ch. Div. V. C. M.**—*Construction—Separate Use—Gift for Sole Use and Disposal.*—Testatrix bequeathed money to F., the wife of B., for her sole use and disposal: *Held* a gift to F. for her separate use.—*Bland v. Dawes*, 50 L.J. Ch. 252; 43 L.T. 751; 29 W.R. 416.
- (liv.) **Ch. Div. V. C. H.**—*Construction—Trust for Use of Daughter and Her Children.*—Testator gave his property to trustees for the benefit of his daughter, for her use and the use of certain of her children for their education, with a direction that his daughter should only use the income until the youngest child attained twenty-one, or married. Six of the children attained twenty-one, and survived their mother: *Held* that there was a gift of income to the daughter for life, subject to the trust for educating the children, and a gift of the capital to the six children as joint tenants on her death.—*Evans v. Evans*, 43 L.T. 692.
- (lv.) **Ch. Div. V. C. H.**—*Construction—Unmarried.*—When the word "unmarried" occurs in a will, and there is nothing in the context or the circumstances of the case to shew a contrary intention on the part of the testator, it should be construed to mean "never having been married."—*Dalrymple v. Hall*, 50 L.J. Ch. 302; 29 W.R. 421.
- (lvi.) **C. A.**—*Construction—Vesting.*—Testator gave the income of stock to his nephew, which he was to enjoy with his wife during their respective lives, but in the event of either dying and the survivor marrying again, the stock was to be divided equally between their children, an arrangement ultimately to take place at the death of their parents should neither marry again: And the money was directed not to be removed from the English funds during the lives of the nephew and wife, nor until the period arrived "for its distribution (after their deaths) among their children surviving": *Held* that the interests of the children were vested and not contingent on their surviving their parents.—*Hannah v. Duke*, L.R. 16 Ch. D. 112; 29 W.R. 341.
- (lvii.) **Ch. Div. V. C. M.**—*Perpetuity—Restraint on Anticipation.*—Gift of residue on trust after the death of Elizabeth, to divide the same among all the children of Elizabeth and Agnes who should then be living, the shares of daughters to be settled to their separate use for their lives without power of anticipation, with remainder in default of appointment, to the surviving children. Agnes was dead at the date of the will and Elizabeth was 60 at testator's death: *Held* that the restraint on anticipation was not a breach of the rule against perpetuities.—*Cooper v. Laroche*, 43 L.T. 794; 29 W.R. 438.

- (lviii.) **Ch. Div. V. C. H.**—*Satisfaction—Bequest of Annuity—Annuity Secured by Bond.*—Testator who had for valuable consideration covenanted to pay an annuity of £10 to H. D., so long as she should continue the widow of J. D., by equal half-yearly payments, bequeathed to her an annuity of £30, if she should so long continue a widow: *Held* that the bequest was not intended as a satisfaction of the annuity of £10.—*Doisee v. Glass*, 50 L.J. Ch. 285.
- (lix.) **Ch. Div. V. C. M.**—*Trust for Accumulation—Maintenance.*—Testator devised real and leasehold property of the annual value of £10,200 to trustees upon trust to accumulate the rents and profits for twenty-one years, and then to H. for life, with remainders in strict settlement. H. had two infant sons, and his means were not adequate to maintain and educate them in a manner suitable to their prospects. The Court made H. an allowance of £2,700 a-year for their maintenance.—*Havelock v. Havelock*, 44 L.T. 168.
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Quarterly Digest

OF

ALL REPORTED CASES.

Tabo Reports, Tabo Journal Reports, Tabo Times
Reports, and Weekly Reporter,

FOR MAY, JUNE, AND JULY, 1881.

By HENRY M. KEARY, of Lincoln's Inn, Barrister-at-Law.

Administration:—

- (xvii.) **P. D. A. Div.**—*Administrator out of Jurisdiction—Bankruptcy*—38 Geo. III., c. 87, s. 1—21 & 22 Vict., c. 95, s. 18.—*Administration de bonis non* of an intestate granted to the assignee in bankruptcy of an administrator out of the jurisdiction, limited to the fund to which the assignee was entitled.—*In the goods of Hammond*, L.R. 6 P.D. 104; 44 L.T. 649; 29 W.R. 807.
- (xviii.) **Ch. Div. F. J.**—*Costs of Suit—Intestacy as to Realty*.—Testatrix having given certain legacies, died intestate as to the rest of her personalty and as to her real estate: *Held* that the costs of an action by her heir-at-law to administer real and personal estate, were primarily payable out of the residuary personalty.—*Thompson v. Harris*, 50 L.J. Ch. 525; 29 W.R. 731.
- (xix.) **C. A.**—*Costs of Suit—Testamentary Expenses*.—Where testator has directed testamentary expenses to be paid out of a particular fund, the costs of an administration suit properly instituted will be payable out of that fund, though the suit has been instituted by legatees of another fund.—*Young v. Dolman*, 44 L.T. 499.
- (xx.) **Ch. Div. F. J.**—*Creditor's Action—Form of Judgment—Judicature Act*, 1875, s. 10.—In a creditor's action, where there is a probability that the estate will prove insolvent, the judgment should contain a provision to the effect that, if the estate prove insolvent, the rules in bankruptcy are to apply.—*Hipkins v. Hildick*, 44 L.T. 547; 28 W.R. 733.
- (xxi.) **C. A.**—*Intestacy—Next-of-Kin—Legitimacy—Domicil*.—Decision of M.R. (see *Administration* iv., p. 1) reversed.—*Re Goodman*, L.R. 17-Ch. D. 266; 50 L.J. Ch. 525; 44 L.T. 527; 29 W.R. 586.
- (xxii.) **C. A.**—*Intestacy—Next-of-Kin Found—Right to Interest*.—Decision of V. C. M. (see *Administration* v., p. 1) reversed.—*Re Gosman*, 29 W.R. 793.
- (xxiii.) **Ch. Div. M. R.**—*Proof—Insolvent Estate—Contingent Liability—Vesting—Bankruptcy Act*, 1869, s. 31.—*Judicature Act*, 1875, s. 10.—

In an administration action of an insolvent estate, where a claim is made in respect of a contingent liability, which is allowed on a valuation as at date of judgment, and the contingency happens before any certificate has been issued, the creditor may prove for the full amount less 4 per cent. from date of judgment to happening of contingency.—*Hill v. Bridges*, L.R. 17 Ch. D. 342; 50 L.J. Ch. 470; 44 L.T. 780.

- (xxiv.) **C. A.**—*Proof—Secured Creditor—Judicature Act, 1875, s. 10.*—Where an estate is being administered by the Court, a secured creditor may either realise or value his security; and when he has elected to value, he can only prove for the balance, after deducting the valuation from his debts. Where the creditor was required by the chief clerk to value his security and he did so, he was held to be bound by the course he had adopted. Decision of Fry, J. (44 L.T. 543, 773; 29 W.R. 658, 752), affirmed.—*Williams v. Hopkins*, 29 W.R. 767.
- (xxv.) **Ch. Div. K. J.**—*Receiver—Liability to Account—Statute of Limitations.*—A receiver in an administration sold stock, part of the estate, in 1870, and received the money for it. He died in 1876 and his final accounts were not passed, nor his recognizance vacated till some time afterwards. In 1880 it was discovered that he had not accounted for the money received for the stock: Held that plaintiff's right to recover this money was not barred by the Statute of Limitations.—*Seagram v. Tuck*, 29 W.R. 784.

Agreements and Contracts:—

- (xxi.) **C. A.**—*Agreement obtained by Fraud—Assignment.*—Defendants agreed to pay T. at the end of six months, £800 in satisfaction of all claims by him against them, T. assigned this agreement to plaintiffs to whom he was indebted, and notice of the assignment was given to defendants. On an action by plaintiffs to recover the £800: Held that a defence that the agreement was obtained by fraud was a good one.—*Wakefield Banking Co. v. Normanton Local Board*, 44 L.T. 697.
- (xxii.) **H. L.**—*Condition Precedent—Preventing Performance of.*—When it is agreed that something shall be done which cannot be done unless both parties to the contract concur in doing it, it is an implied term in the contract that each party shall do everything on his part necessary to be done towards carrying out the agreement.—*Mackay v. Dick*, L.R. 6 App. 251; 29 W.R. 541.
- (xxiii.) **C. A.**—*Covenant not to use as Beer-shop.*—The selling beer under an off licence to sell beer not to be drunk on the premises, is a breach of a covenant not to use the premises as a beer-shop.—*London & Suburban Land Co. v. Field*, L.R. 16 Ch. D. 645; 44 L.T. 444.
- (xxiv.) **Ch. Div. F. J.**—*Covenant to Procure Supply of Water—Construction.*—A clause in an agreement by a railway company to purchase land, binding the company to procure as good a supply of water as the supply cut off by their line from the severed lands of the vendor, only binds the company to do once for all what may reasonably be expected to insure a sufficient supply of water.—*Re Gray & Metropolitan Rail. Co.*, 44 L.T. 567.
- (xxv.) **Q. B. Div.**—*Memorandum in Writing—Statute of Frauds, sec. 4.*—Plaintiff signed a memorandum setting forth the terms of a contract by which he agreed to let a carriage to defendant for a term longer than a year; and defendant in a subsequent letter to plaintiff referred to their "agreement for the hire of your carriage:" Held a sufficient memorandum in writing to satisfy sec. 4 of Statute of Frauds.—*Cave v. Hastings*, L.R. 7 Q.B.D. 126.

- (xxvi.) **C. A.**—*Representation influencing Conduct—Mutuality—Interest in Lands—Statute of Frauds, sec. 4.*—Decision of Ex. Div. (see *Agreements and Contracts* vii., p. 3) reversed.—*Alderson v. Maddison*, 50 L.J. Ex. 466; 29 W.R. 556.
- (xxvii.) **C. A.**—*Sale of Goods—Delivery by Instalments.*—Defendant sold to plaintiff 2000 tons of iron to be delivered by equal instalments in November, December and January. Plaintiff failed to take delivery of the iron in November: *Held* that defendant was entitled to repudiate the contract.—*Honck v. Muller*, L.R. 7 Q.B.D. 92.

Arbitration:—

- (vi.) **Q. B. Div.**—*Agreement to Refer—Stay of Proceedings—Policy of Insurance.*—An insurance policy effected with defendant company contained a condition that all disputes should, if either party required, be referred to arbitration in manner specified in the company's private Act. By this Act the Court or a Judge is empowered to order a stay of any proceedings contrary to the Act. In an action on the policy where the only issue was whether the death of the assured was caused by accident or not: *Held* that the company were, in the absence of any suggestion of fraud, entitled to a stay of proceedings.—*Minifie v. Railway Passengers Assurance Co.*, 44 L.T. 552.
- (vii.) **Ch. Div. F. J.**—*Arbitration Clause—17 & 18 Vict., c. 125, s. 11.*—The Court will not, after delivery of defence, order a reference to arbitration under sec. 11 of C. L. P. Act, 1854.—*West London Dairy Society v. Abbott*, 44 L.T. 376; 29 W.R. 584.

Australia, Law of:—

- (i) **P. C.**—*Conflict of Laws—Lex Loci Contractus—Foreign Corporation.*—*Held* that the Western Australia Joint Stock Companies Ordinance Act, 1858, does not apply to foreign corporations, or to companies incorporated out of Western Australia; and that a company duly registered and incorporated in Victoria could not be again registered as a company in Western Australia.—*Bateman v. Service*, L.R. 6 App. 386; 44 L.T. 436.

Bank:—

- (i.) **Ch. Div. F. J.**—*Trust Account—Transfer to Private Account—Liability—21 Jac. I., c. 16.*—A sum of money was standing in the books of a bank to the credit of the account of the trustees of the late A., and the bank allowed them to transfer sums from this account to their private accounts: *Held* that the *cestuis-que-trust* were entitled to recover from the bank these sums, and that the Statute of Limitations would not constitute a valid defence.—*Forston v. Manchester & Liverpool Banking Co.*, 44 L.T. 406.

Bankruptcy:—

- (lxvii.) **C. A.**—*Action against Bankrupt in Colony—Sequestration—Bankruptcy Act, 1869, s. 13.*—Before issuing sequestration against real estate of a bankrupt in a colony in order to compel his appearance in an action there to realise a mortgage by the bankrupt of other real estates, the leave of the Bankruptcy Court ought to be obtained. When such sequestration had issued without leave, and an appearance had been entered: *Held* that it was sufficient for plaintiff to undertake not to use the sequestration for any other purpose.—*Ex parte Rogers, Re Boustead*, L.R. 16 Ch. D. 665; 44 L.T. 357.
- (lxviii.) **C. A.**—*Act of Bankruptcy—Bill of Sale—Past Debt.*—Decision of C. J. B. (see *Bankruptcy* xi., p. 78) affirmed.—*Ex parte Dann, Re Parker*, L.R. 16 Ch. D. 26; 44 L.T. 760; 29 W.R. 771.

- (lix.) **C. A.**—*Allowance to Bankrupt—Gift of Furniture—Bill of Sale—Bankruptcy Act, 1869, s. 38.*—An undischarged bankrupt, to whom his creditors had given a certain part of his furniture, assigned it by bill of sale to plaintiff, and afterwards sent it to defendant, an auctioneer, who sold it and paid the money received to the bankrupt: *Held* that defendant was liable in an action for conversion.—*Brown v. Hickinbotham*, 50 L.J. C.P. 426.
- (lxx.) **C. A.**—*Carrying on Bankrupt's Business—Bankruptcy Act, 1869, ss. 14, 25.*—The creditors of a bankrupt have no power to authorise the trustee to carry on the bankrupt's business, except so far as may be necessary for the beneficial winding-up of the business.—*Ex parte Emmanuel*, *Re Batey*, L.R. 17 Ch. D. 35; 50 L.J. Ch. 305; 29 W.R. 526.
- (lxxi.) **C. A.**—*Composition—Reduction of Proof—Application by Bankrupt—Locus Standi.*—Decision of C. J. B. (see *Bankruptcy* xlvii., p. 79) affirmed.—*Ex parte Bacon*, *Re Bond*, 29 W.R. 574.
- (lxxii.) **C. J. B.**—*Debtor's Summons—Service—Bankruptcy Rules, 1870, r. 1, 61.*—A debtor's summons may be served by any person authorised by the creditor.—*Ex parte Denman*, *Re Denman*, 29 W.R. 616.
- (lxxiii.) **C. J. B.**—*Defaulting Trustee—Refusal to Commit—41 & 42 Vict., c. 54.*—The Court will refuse to grant a writ of attachment against a defaulting trustee where, owing to the defaulter being without any means, no useful object could be gained thereby.—*Re Mackenzie*, 44 L.T. 618.
- (lxxiv.) **C. J. B.**—*Elegit—Prior Act of Bankruptcy—Bankruptcy Act, 1869, ss. 87, 95.*—The day after an act of bankruptcy had been committed by a debtor, a creditor issued an elegit, under which the sheriff seized the debtor's goods, but no inquisition for appraising them was held. Four days afterwards a petition was presented, and the debtor was adjudicated bankrupt: *Held* that the goods seized belonged to the trustee in bankruptcy.—*Ex parte Sulger*, *Re Chinn*, 44 L.T. 652; 29 W.R. 808.
- (lxxv.) **C. J. B.**—*Execution—Sum under £50—Possession Money—Bankruptcy Act, 1869, s. 87.*—Where the receiver in a liquidation has induced the sheriff, by promising to pay extra expenses incurred thereby, not to sell goods seized under a *fi. fa.* the trustee in the liquidation cannot take advantage of the fact that the debt for which the goods were seized has been thereby raised, by the addition of possession money, to a sum exceeding £50.—*Ex parte Ind Coope & Co.*, *Re Bullen*, 44 L.T. 587; 29 W.R. 667.
- (lxxvi.) **C. A.**—*Fraudulent Preference—Decision of C. J. B. (see Bankruptcy xxxiii., p. 47) affirmed.*—*Ex parte Stubbins*, *Re Wilkinson*, L.R. 17 Ch. D. 58; 29 W.R. 653.
- (lxxvii.) **C. A.**—*Income of Bankrupt—Voluntary Allowance—Bankruptcy Act, 1869, s. 90.*—Decision of C. J. B. (see *Bankruptcy* lii., p. 80) reversed.—*Ex parte Wicks*, *Re Wicks*, L.R. 17 Ch. D. 70; 29 W.R. 525.
- (lxxviii.) **C. A.**—*Infant Trader—37 & 38 Vict., c. 62.*—An infant trader who has presented a liquidation petition cannot be adjudicated bankrupt on a bankruptcy petition founded on the liquidation petition. Decision of C. J. B. (44 L.T. 588) reversed.—*Ex parte Jones*, *Re Jones*, 29 W.R. 747.
- (lxxix.) **C. J. B.**—*Liquidation—Appointment of Solicitor—Bankruptcy Act, 1869, s. 29.*—The consent of the committee of inspection required by sec. 29 of Bankruptcy Act, to be given to the appointment of a solicitor by trustee, may be given by the members of the committee separately.—*Ex parte White & Co.*, *Re Gearing*, 29 W.R. 632.

- (lxxx.) **C. J. B.**—*Liquidation—Following Trust Moneys—Identification.*—Trust moneys cannot be followed unless clearly identified.—*Ex parte Hardcastle, Re Manson*, 44 L.T. 523; 29 W.R. 615.
- (lxxxi.) **C. A.**—*Liquidation—Prosecution of Debtor and Accomplices—Person Aggrieved*—32 & 33 Vict., c. 62, s. 16—*Bankruptcy Act*, 1869, s. 71.—Decision of C. J. B. (see *Bankruptcy xxxv.*, p. 48) affirmed.—*Ex parte Evans, Re Orbell*, 44 L.T. 762; 29 W.R. 573.
- (lxxxii.) **C. A.**—*Proof—Joint and Separate Estate—Interest.*—A creditor, whose proof is admitted against both separate estates of two bankrupt partners, is not entitled to any dividend in respect of interest accrued on his debt after date of adjudication, until the joint creditors have been paid the principal of their debts in full.—*Ex parte Findlay, Re Collie*, L.R. 17 Ch. D. 334.
- (lxxxiii.) **C. A.**—*Proof—Part Payment by Surety—Reduction of Proof.*—Decision of C. J. B. (see *Bankruptcy lxii.*, p. 81) reversed.—*Ex parte National Provincial Bank, Re Rees*, L.R. 17 Ch.D. 98; 44 L.T. 325; 29 W.R. 796.
- (lxxxiv.) **C. A.**—*Re-direction of Bankrupt's Letters—Bankruptcy Act*, 1869, s. 85.—An application under sec. 85 of *Bankruptcy Act* for the re-direction by the Postmaster-General of letters addressed to the bankrupt cannot be made by a petitioning creditor, but only by the trustee.—*Ex parte Lister, Re Halberstamm*, 29 W.R. 621.
- (lxxxv.) **C. J. B.**—*Retiring Trustee—Failure to make Report—Committal.*—Where a retiring trustee has failed to render an account to the registrar within the time required by rule 126, and having been ordered by the County Court Judge to appear and explain, has failed to appear, he cannot thereupon be committed to prison for contempt.—*Re Pookes Royal*, L.R. 7 Q.B.D. 9; 44 L.T. 314.
- (lxxxvi.) **C. A.**—*Secured Creditor—Attachment—Tolzey Court of Bristol—Bankruptcy Act*, 1869, s. 16 (5).—An attachment of goods of defendant in an action of debt in the Tolzey Court of Bristol does not make plaintiff a secured creditor within sec. 16, sub-sec. 5, of *Bankruptcy Act*.—*Ex parte Sear, Re Price*, L.R. 17 Ch. D. 74.
- (lxxxvii.) **C. A.**—*Secured Creditor—Garnishee Order.*—Decision of C. J. B. (see *Bankruptcy lxxv.*, p. 82) reversed.—*Ex parte Pillers, Re Curtoys*, 44 L.T. 691; 29 W.R. 575.
- (lxxxviii.) **C. A.**—*Undischarged Bankrupt—Remuneration for Personal Labour—Action—Adding Plaintiff—Ord.* 16, r. 19.—The remuneration agreed to be paid to an undischarged bankrupt for his personal services and damages obtained by him for wrongful dismissal will pass to his trustee in bankruptcy. When the bankrupt has brought an action in his own name for such remuneration and damages the Court will add the name of the trustee as co-plaintiff and give him the conduct of the action. Decision of Fry, J. (L.R. 17 Ch. D. 169; 50 L.J. Ch. 492; 44 L.T. 344; 29 W.R. 600) affirmed.—*Emden v. Carter*, 44 L.T. 636.

Bill of Sale:—

- (xxi.) **Q. B. Div.**—*Affidavit—Residence of Grantor.*—The affidavit filed with a bill of sale described the grantor as at present residing at 3, W. Street, Southampton, and having a permanent residence at 9, P. Street, Nine Elms. The grantor was a travelling circus proprietor, who owned 9, P. Street, but had not resided there for six years: *Held* a sufficient description.—*Cooper v. Ibberson*, 44 L.T. 309; 29 W.R. 566.
- (xxii.) **C. A.**—*Attestation*—41 & 42 Vict., c. 31, s. 10.—A solicitor, who is the grantee of a bill of sale, cannot be the attesting solicitor of that bill so

as to satisfy sec. 10 of Bills of Sale Act, 1878.—*Seal v. Claridge*, 50 L.J. Ex. 316; 44 L.T. 501; 29 W.R. 598.

- xxiii.) **C. A.**—*Bankruptcy—Apparent Possession—Possession by Sheriff*—41 & 42 Vict., c. 31, s. 8.—If goods comprised in an unregistered bill of sale are, at the time of filing a bankruptcy petition against the grantor, in the actual possession of the sheriff under an execution, they are not in the apparent possession of the grantor, and the Bills of Sale Act does not apply.—*Ex parte Saffery, Re Brenner*, L.R. 16 Ch. D. 668; 44 L.T. 324; 29 W.R. 749.
- (xxiv.) **C. A.**—*Consideration*—41 & 42 Vict., c. 31, s. 8.—Decision of C. J. B. (see *Bill of Sale* xiv., p. 49) affirmed.—*Ex parte Winter, Re Fothergill*, 44 L.T. 323; 29 W.R. 575.
- (xxv.) **C. A.**—*Consideration*—41 & 42 Vict., c. 31, s. 8.—Decision of Q. B. Div. (see *Bill of Sale* xix., p. 83) affirmed.—*Hamilton v. Chains*, L.R. 7 Q.B.D. 1; 50 L.J. Q.B. 456; 44 L.T. 555, 764; 29 W.R. 676.
- (xxvi.) **C. A.**—*Conversion—Auctioneer.*—S. took to defendant's repository in the City of London certain horses, and entered them for sale there. He afterwards sold them privately there, and defendant took the purchase-money, and, after deducting commission, paid the balance to S. The horses were included in a bill of sale previously granted by S.: *Held* that defendant was not liable in an action for conversion.—*National Mercantile Bank v. Rymill*, 44 L.T. 307; 767.
- (xxvii.) **C. J. B.**—*Registration—Description of Grantor*—41 & 42 Vict., c. 31, s. 10.—The grantor of a bill of sale was therein described as a widow, and no statement was made as to her occupation. She had been a licensed victualler for several years, but had ceased to be so about a month previously: *Held* that the description was sufficient.—*Ex parte Wolfe, Re Davey*, 44 L.T. 321.
- (xxviii.) **C. A.**—*Registration—Execution—Inventory of Goods—Receipt by Sheriff for Purchase Money.*—S. bought goods sold by a sheriff who had seized under a writ of *fi. fa.*, and the sheriff gave him an inventory of the goods and a receipt for the price; and he left the goods in possession of the debtor: *Held* that the inventory and receipt did not constitute a bill of sale requiring registration within Bills of Sale Act, 1878.—*Marsden v. Meadows*, L.R. 7 Q.B.D. 80; 29 W.R. 816.
- (xxix.) **C. A.**—*Registration—Priority.*—The provisions in sec. 10 of Bills of Sale Act, 1878, as to the priority of bills of sale, apply to all competing bills of sale in all cases where registration is necessary.—*Conelly v. Steer*, 50 L.J. Q.B. 327; 29 W.R. 529.
- (xxx.) **Q. B. Div.**—*Registration—Priority.*—The provisions in sec. 10 of Bills of Sale Act, 1878, as to the priority of bills of sale, apply only where there has been a bankruptcy or execution.—*Lyons v. Tucker*, L.R. 6 Q.B.D. 660; 50 L.J. C.P. 322; 44 L.T. 312.
- (xxxi.) **C. A.**—*Transfer—Assignment*—41 & 42 Vict., c. 31, s. 10.—A bill of sale of goods, duly registered, was given to secure £500 and interest. Part of this was paid off, and, by a subsequent deed between the parties to the bill of sale and the plaintiff, the security was transferred and the goods assigned to him on his paying off the balance due, and making a further advance to the grantor, making the whole amount secured £501, with interest: *Held* affirming the Q. B. Div. (50 L.J. Q.B. 403; 44 L.T. 421), that this was a transfer of a bill of sale within sec. 10 of Bills of Sale Act, 1878, and did not require registration.—*Horne v. Hughes*, L.R. 6 Q.B.D. 676; 44 L.T. 678; 29 W.R. 576.

Building Society:—

- (i.) **Ch. Div. F. J.**—*Incorporation—Certificate—Jurisdiction—38 Vict., c. 9, ss. 1, 2.*—When the registrar of Building Societies has issued a certificate of incorporation of a society under the Acts of 1874 and 1875, it is not competent for the Court, in an action by some members against the officers of the society, to declare the certificate to have no effect.—*Glover v. Giles*, 29 W.R. 603.

Canada, Law of:—

- (vi.) **P. C.**—*New Brunswick—Income Tax.*—The tax imposed by sec. 4 of New Brunswick Act, 31 Vict., c. 36, upon income, is leviable in respect of the balance of gain over loss made in the fiscal year.—*Lawless v. Sullivan*, L.R. 6 App. 373.

Ceylon, Law of:—

- (ii.) **P. C.**—*Presumption of Marriage.*—According to the law of Ceylon, when a man and woman are proved to have lived together as man and wife, the law will presume, in the absence of evidence to the contrary, that they were lawfully married.—*Sastry Velaidar Aronegary v. Sembecutty Vaigalie*, L.R. 6 App. 364.

Common:—

- (ii.) **C. A.**—*Common of Pasturage—Estovers—Prescription—Profit à Prendre.*—Held, reversing the decision of V. C. B. (see *Common i.*, p. 9) that the right of cutting and carrying away brakes and herbage, though a profit à prendre in alieno solo could be claimed, under the Prescription Act, (2 & 3 Will. IV., c. 71) by an owner in respect of his tenement.—*Earl De La Warr v. Miles*, 44 L.T. 487; 29 W.R. 809.

Company:—

- (lii.) **Ch. Div. K. J.**—*Cost-book Mine—Invalid Forfeiture of Shares—Lapse of Time—Estoppel.*—An owner of shares in a cost-book mine which have been irregularly and improperly forfeited for non-payment of calls, cannot lie by for six years and then come forward and assert his right.—*Rule v. Jewell*, 29 W.R. 755.
- (liii.) **C. A.**—*Unregistered Company—Similarity of Names—Injunction.*—Decision of M. R. (see *Company xliii.*, p. 85) reversed.—*Hendricks v. Montagu*, 50 L.J. Ch. 456.
- (liv.) **C. A.**—*Winding-up—Assignment of Property of Company—Claim against Directors—Companies Act, 1862, s. 95 (3).*—The official liquidator of a company, with sanction of the Court, assigned to W. all the estate, property, and effects of the company, which the liquidator had power to dispose of: Held that this included claims by the company against its directors for losses occasioned by improvident sales, and for concealed profits made by sales to the company.—*Re Park Gate Waggon Co.*, L.R. 17 Ch. D. 234.
- (lv.) **Ch. Div. F. J.**—*Winding-up—Contributory—Agreement to take Shares—Set-off—Companies Act, 1867, s. 25.*—Section 25 of Companies Act, 1867, has no application in a question of liability to take shares which were never allotted.—*Norton's Case, Re Victoria Mansions*, 50 L.J. Ch. 454.
- (lvi.) **C. A.**—*Winding-up—Contributory—Purchase of Shares by Company—Ultra Vires.*—The memorandum of association of a limited company did not expressly give the company power to purchase its own shares. The articles gave the directors power to purchase for the company any of its shares. The directors agreed with W. to purchase his shares for the

- company, and this arrangement was confirmed at an extraordinary general meeting. More than twelve months afterwards the company was wound-up: *Held* that W. was not liable as a contributory.—*Re Dronfield Coal Co.*, L.R. 7 Ch. D. 76; 56 L.J. Ch. 387; 44 L.T. 361; 29 W.R. 768.
- (lvii.) **C. A.**—*Winding-up—Director—Misfeasance.*—Directors of a company formed to work a patent accepted from the vendors certain fully paid-up shares as a bonus for their services. The company at the time consisted of eight members, who all knew of the transaction. Subsequently, more shares were allotted to other persons. In the winding-up: *Held* that the directors had not been guilty of misfeasance, and could not be made liable for the value of their bonus shares.—*Re British Seamless Paper Box Co.*, 50 L.J. Ch. 497; 44 L.T. 498; 29 W.R. 690.
- (lviii.) **Ch. Div. F. J.**—*Winding-up—Rent—33 & 34 Vict., c. 35, s. 2.*—The landlord of premises occupied by the liquidator for carrying on business during the winding-up of a company: *Held* entitled to the payment in full of the apportioned rent in respect of the time subsequent to the presentation of the winding-up petition.—*Ex parte Seymour, Re South Kensington Stores.*—L.R. 17 Ch. D. 161; 50 L.J. Ch. 466; 44 L.T. 471; 29 W.R. 662.
- (lix.) **Ch. Div. F. J.**—*Winding-up—Shareholder's Petition—Supervision Order—Companies Act, 1862, s. 149.*—Shareholders of an insolvent company in pursuance of a special resolution, presented a petition for a voluntary winding-up under supervision. No creditor supported the petition, but a majority of creditors asked for a compulsory order. The petition was ordered to stand over in order to give the creditors an opportunity of petitioning for a compulsory order.—*Re Electric and Magnetic Co.*, 50 L.J. Ch. 491; 44 L.T. 604; 29 W.R. 714.
- (lx.) **C. A.**—*Winding-up—Unregistered Company—Companies Act, 1862, ss. 199, 204.*—Sections 199, 204, of Companies Act, 1862, apply all the provisions for the winding-up of companies registered under the Act to the winding-up of unregistered companies.—*Rudow v. Great Britain Life Assurance Society*, 50 L.J. Ch. 504; 44 L.T. 688; 29 W.R. 585.
- (lxi.) **C. A.**—*Winding-up Voluntarily—No Liquidator—Distress.*—Decision of V. C. M. (see *Company li.*, p. 86) reversed.—*Thomas v. Patent Lionite Co.*, L.R. 17 Ch. D. 250; 44 L.T. 392; 29 W.R. 596.

Copyright:—

- (v.) **Ch. Div. M. R.**—*Newspaper Registration—Proprietor—5 & 6 Vict., c. 45.*—A newspaper requires registration under the Copyright Act to give the proprietor copyright in its contents, and a right to sue in case of piracy. He must also prove in order to sue, that he has employed the author on the terms that the copyright shall belong to the proprietor.—*Walter v. Howe*, 29 W.R. 776.
- (vi.) **C. A.**—*Title of Book.*—Decision of V. C. B. (see *Copyright iv.*, p. 52) reversed on the ground that the title in question was not an original invention.—*Dicks v. Yates*, 44 L.T. 660.

County Court:—

- (viii.) **Q. B. Div.**—*Interpleader—Sale by Sheriff—19 & 20 Vict., c. 106, s. 72; 30 & 31 Vict., c. 142, s. 31.*—It is not necessary that a bailiff of a county court should make a request to a claimant to deposit the value or a sum of money for keeping possession of goods seized in execution, or that he should take out an interpleader summons, before proceeding to sell goods seized.—*Davies v. Wise*, 29 W.R. 804.

- (ix.) **C. A.**—*Non-Suit*—*County Court Rules*—Ord. 16, r. 17—19 & 20 Vict., c. 108, s. 32:—*Held* that Ord. 16, r. 17 of County Court Rules, 1875, is valid, and that a judgment of non-suit in a County Court is therefore a bar to a fresh action in the same matter.—*Poyser v. Minors*, 29 W.R. 773.

Crimes and Offences:—

- (xviii.) **Q. B. Div.**—*Cruelty to Animals*—*Domestic Animals*—*Parrots*—12 & 13 Vict., c. 92, s. 2; 17 & 18 Vict., c. 60, s. 3.—Young parrots are not, in the absence of further evidence, domestic animals within sec. 2 of 12 & 13 Vict., c. 92.—*Swan v. Saunders*, 50 L.J. M.C. 67; 44 L.T. 424; 29 W.R. 538.
- (xix.) **Q. B. Div.**—*Education*—*Attendance Order*—*School Fees*—33 & 34 Vict., c. 75; 39 & 40 Vict., c. 79.—Decision of Q. B. Div. in *Richardson v. Saunders* (see *Crimes and Offences* xiv., p. 87) over-ruled.—*Saunders v. Richardson*, 29 W.R. 800.
- (xx.) **C. C. R.**—*Forgery*—*Bill of Exchange*—*Inchoate Instrument*.—An instrument in the form of a bill of exchange accepted by the person to whom it is addressed, but not signed by drawer, is not a bill of exchange; and proof of forgery of an indorsement on such instrument will not support a conviction for forging an indorsement on a bill of exchange.—*Regina v. Harper*, L.R. 7 Q.B.D. 78; 50 L.J. M.C. 90; 44 L.T. 615; 29 W.R. 743.
- (xxi.) **C. C. R.**—*Incitement to Murder*—*Publication in Newspaper*—24 & 25 Vict., c. 100, s. 4.—The offence of encouraging or endeavouring to persuade any person to murder another person, within sec. 4 of 24 & 25 Vict., c. 100, may be committed by the publication of an article in a newspaper, though not addressed to any particular person.—*Regina v. Most*, 29 W.R. 758.
- (xxii.) **C. C. R.**—*Larceny*—*Obtaining Money by Threats*.—When in consequence of A.'s threats, B. has given money to A., A. may be convicted of larceny, though at the time B. owed A. a part of the money so given.—*Regina v. Lovell*, 50 L.J. M.C. 91; 44 L.T. 319.
- (xxiii.) **H. L.**—*Perjury*—*Separate Misdemeanours*—*Cumulative Sentence*—*Penal Servitude*—2 Geo. II., c. 25, s. 2.—Decision of Court of Appeal (see *Crimes and Offences* v., p. 13) affirmed.—*Castro v. The Queen*, L.R. 6 App. 229; 44 L.T. 350; 29 W.R. 669.

Debtor and Creditor:—

- (xiii.) **C. A.**—*Attachment of Debt*—*Second Mortgage*—*Sale by First Mortgagee*—*Priorities*.—Decision of V. C. B. (see *Debtor and Creditor* viii., p. 87) affirmed.—*Chatterton v. Watney*, L.R. 17 Ch. D. 259; 44 L.T. 391; 29 W.R. 573.
- (xiv.) **C. A.**—*Debtor's Summons*—*Conditional Agreement for Reduction of Debt*—*Default*.—A creditor who had issued a debtor's summons for £344, agreed to accept £50 and three bills of exchange for £50 each, at three, six, and nine months, and that upon payment of the bills in due course he would give a receipt in full for the debt. In default of payment he was to be at liberty to proceed for the full amount:—*Held* that the last provision was not a penalty, and that on default in payment of the third bill the creditor was remitted to his original rights.—*Ex parte Burden, Re Neil*, L.R. 16 Ch. D. 675; 44 L.T. 525.
- (xv.) **C. A.**—*Equitable Assignment*—*Revocation*.—Defendant being indebted to K., who was indebted to plaintiff to the extent of £100, K. brought to defendant a document signed by himself authorising defendant to pay

to plaintiff £100 of the money due from defendant. Defendant wrote on this, "I accept this authority," and K. gave it to plaintiff. Held that this was a sufficient equitable assignment of the debt due from defendant, and could not be revoked without plaintiff's consent.—*Greenway v. Atkinson*, 29 W.R. 560.

- (xvi.) **Q. B. Div.**—*Set-off—Counter-claim—Debt to Principal—Liability of Surety.*—Action by A. on a covenant by B. to pay all liabilities which A. might incur under a deed of assignment. B. pleaded that the covenant was a joint and several covenant of himself and C., and that A. was indebted to C. in an amount exceeding his claim against defendant, and that C. had assigned A.'s debt to himself and B. in equal shares as tenants in common. As to half of A.'s claim, B. claimed to set-off the debt so assigned, and as to the other half that he was entitled to be exonerated by C: Held no defence.—*Bowyear v. Pawson*, L.R. 6 Q.B.D. 540; 50 L.J. Q.B. 495; 29 W.R. 664.

Defamation:—

- (vi.) **Q. B. Div.**—*Slander—Privilege.*—Defendant having a *prima facie* ground of suspicion that he was being robbed by plaintiff, made enquiries of two persons, and to each person said that plaintiff had robbed him: Held that the occasion was not privileged.—*Harrison v. Fraser*, 29 W.R. 652.

Easement:—

- (ix.) **Ch. Div. V. C. B.**—*Prescription—Yearly Tenant.*—A yearly tenant cannot acquire an easement in the land of which he is tenant as against his landlord.—*Outram v. Maude*, L.R. 17 Ch. D. 391; 29 W.R. 818.

Ecclesiastical Law:—

- (vi.) **C. A.**—*Jurisdiction of Judge at Westminster—Significavit—Execution in County Palatine of Lancaster*—5 Eliz., c. 23, s. 11—53 Geo. III., c. 127—*Public Worship Regulation Act*, 1874.—Lord Penzance, when required by the Archbishop of York to hear the matter of a representation in the province or in London or Westminster, under sec. 9 of Public Worship Regulation Act, 1874, has jurisdiction to dispose of every matter pending or subsequent to the hearing, being part of the matter of the complaint. The proceedings against a contumacious clerk within County Palatine of Lancaster, under 53 Geo. III., c. 127, are similar to those required on a writ *de excommunicato capiendi* by 5 Eliz., c. 23, s. 11.—*Re Green*, 44 L.T. 619.
- (vii.) **Arch. Ct.**—*Monition—Disobedience—Deposition.*—An incumbent had been suspended *ab officio et beneficio* for certain offences, but the suspension had never been enforced. The Court refused to pronounce a decree of deprivation in a fresh suit instituted on account of similar offences.—*Martin v. Mackonochie*, L.R. 6 P.D. 87.
- (viii.) **H. L.**—*Monition—Suspension—Prohibition*—53 Geo. III., c. 127.—In a criminal suit against a clerk in an Ecclesiastical Court, a monition to abstain in future from the commission of unlawful acts may be attached to a definite sentence; and, if the monition be disobeyed, the clerk may, upon motion, without a fresh suit, be condemned to suspension *ab officio et beneficio*.—*Mackonochie v. Lord Penzance*, L.R. 6 App. 424; 44 L.T. 479; 29 W.R. 638.

Election:—

- (xxi.) **Elect. Pet.**—*Parliament—Voting—Marking Paper—Marked Register.*—Consideration of what are sufficiently marked ballot papers. The marked register of voters is only *prima facie* evidence as to whether a person has or has not voted, and may be rebutted by substantial opposing evidence.—*McLaren v. Milne Holmes*, 44 L.T. 289.

Evidence :—

- (xi.) **C. C. R.**—*Confession—Admissibility*.—Previously to any charge being made against prisoner, his employer said to him, in the presence of a police inspector, "The inspector tells me you are making house-breaking implements; if this is so, you had better tell the truth, it may be better for you." Prisoner then made admissions which contributed to his being convicted of larceny: *Held* that the admissions ought not to have been received in evidence.—*Regina v. Fennell*, 44 L.T. 687; 29 W.R. 742.
- (xii.) **Ch. Div. F. J.**—*Legitimacy—Presumption of Marriage—Entry in College Books*.—Minutes of meetings of a college entered in a book kept for that purpose, but not authenticated by the signature of the college registrar: *Held* not admissible on a question of legitimacy.—*Fox v. Bearblock*, L.R. 17 Ch. D. 429; 60 L.J. Ch. 489; 44 L.T. 508; 29 W.R. 661.

Fishery :—

- (ii.) **C. A.**—*Royal Grant—Inference—Claim by Inhabitants*.—Decision of C. P. Div. (see *Fishery* i., p. 16) affirmed.—*Mayor of Saltash v. Goodman*, L.R. 7 Q.B.D. 106; 29 W.R. 639.

Gas :—

- (i.) **Q. B. Div.**—*Special Act—10 Vict., c. 15, s. 49; 34 & 35 Vict., c. 41, ss. 1, 3, 35*.—*Held* that the provisions of the Gas Works Clauses Act, 1871, applied to a gas company incorporated in 1853 by a special act incorporating the Gas Works Clauses Act, 1847; and that where the company had failed to send to the local authority a statement of its annual accounts as required by sec. 35, of the Act of 1871, they might be proceeded against for having failed to send a copy of such accounts to an applicant, though the proceedings were not undertaken till more than six months after the date for sending in such accounts.—*Dudley Gas Co. v. Warmington*, 60 L.J. M.C. 69; 44 L.T. 475; 29 W.R. 680.

Highway :—

- (xi.) **Q. B. Div.**—*Obstruction—Indictment—Acquittal—New Trial*.—On an indictment for obstructing a highway there can be no new trial after a verdict of not guilty.—*Regina v. Duncan*, 60 L.J. M.C. 95; 44 L.T. 521.
- (xii.) **Q. B. Div.**—*Repair—License to get Materials—5 & 6 Will. IV., c. 50, s. 54*.—A license may be granted to get materials for the repair of highways under sec. 54 of 5 & 6 Will. IV., c. 50, though the materials when got must be carried away by an avenue to a house.—*Ramsden v. Yates*, L.R. 6 Q.B.D. 583; 44 L.T. 612; 29 W.R. 628.
- (xiii.) **Q. B. Div.**—*Repair—License to get Materials—5 & 6 Will. IV., c. 50, ss. 51-54*.—Justices can make an order allowing stones lying upon enclosed lands to be gathered for the repair of a highway within the same parish, without satisfaction being made for the value of the stones.—*Alresford Rural Authority v. Scott*, 29 W.R. 741.
- (xiv.) **Q. B. Div.**—*Repair—Disturnpiked Road—41 & 42 Vict., c. 77, s. 13*.—Sec. 13 of Highways and Locomotives (Amendment) Act, 1878, does not apply to the case of roads which have been disturnpiked by operation of ss. 47-50 of 10 & 11 Vict., c. 84, in consequence of the extension of the boundaries of a borough between Dec. 31, 1870, and the passing of the first-mentioned act.—*Mayor of Rochdale v. Lancashire Justices*, L.R. 6 Q.B.D. 525; 44 L.T. 316; 29 W.R. 757.

Husband and Wife:—

- (xxviii.) **Ch. Div. M. R.**—*Curtesy—Devise to Wife—Death in Testator's Lifetime*—1 *Vict.*, c. 26, ss. 3, 33.—Testator, who died in 1875, by his will, dated in 1872, devised freeholds to his daughter, her heirs and assigns for her separate use. The daughter died in 1874, leaving her husband and a child surviving: *Held* that the husband was entitled to the devised property for life as tenant by the curtesy.—*Eager v. Furnivall*, L.R. 17 Ch. D. 115; 44 L.T. 464; 29 W.R. 649.
- (xxix.) **Ch. Div. V. C. H.**—*Declaration of Trust—Intended Gift to Wife.*—Words importing a present intention on the part of a husband to make a gift to his wife cannot be held to operate as a declaration of trust.—*Breton v. Woolven*, L.R. 17 Ch. D. 416; 50 L.J. Ch. 369; 44 L.T. 337; 29 W.R. 777.
- (xxx.) **P. D. A. Div.**—*Divorce—Adultery—Maintenance—Previous Separation Deed.*—A wife, by separation deed, agreed to accept certain sums as a provision for her support, and not to sue her husband for any further maintenance. Subsequently she discovered that he had been guilty of incestuous adultery, and she obtained a decree for divorce: *Held* that she was entitled to the usual order for permanent maintenance.—*Morrall v. Morrall*, L.R. 6 P.D. 98.
- (xxxi.) **P. D. A. Div.**—*Divorce—Adultery and Cruelty—Condonation—Revival.*—Condoned adultery and cruelty may be revived by subsequent misconduct which falls short of adultery.—*Ridgway v. Ridgway*, 29 W.R. 612.
- (xxxii.) **Ch. Div. V. C. B.**—*Lunacy of Husband—Conversion by Wife.*—Statement of claim in action by representatives of deceased husband against representatives of deceased wife, alleging that wife during husband's lifetime (he being a lunatic not so found) took possession of and sold certain of his chatels, and applied the proceeds to her own use, and claiming recovery of proceeds from her estate. Demurrer overruled.—*Williams v. Stratton*, 50 L.J. Ch. 495; 44 L.T. 600.
- (xxxiii.) **C. A.**—*Separate Estate—Restraint on Anticipation.*—Decision of V. C. M. (see *Husband and Wife* x., p. 18) reversed.—*Pike v. Fitzgibbon*, 50 L.J. Ch. 394; 44 L.T. 562; 29 W.R. 551.

Insurance:—

- (v.) **Q. B. Div.**—*Fire Insurance—Loss through Felonious Act of Wife of Assured.*—An insurance company granted a fire policy to S., and during its currency S.'s wife feloniously burnt the property insured. The company brought an action against S. and wife for damages: *Held* that the action could not be maintained, the company not having admitted their liability on the policy.—*Midland Counties Insurance Co. v. Smith*, L.R. 6 Q.B.D. 561; 50 L.J. Q.B. 329.
- (vi.) **Q. B. Div.**—*Insurance Against Accident—Death Caused by Fit.*—A policy of insurance against death by accident provided that the insurers should not be liable in case of death arising from fits, whether causing such death directly or jointly with any accidental injury. Insured, while standing on a railway platform, had a fit, and in consequence fell on the railway, and was killed by a passing engine: *Held* that the insurers were liable.—*Lawrence v. Accident Insurance Co.*, 29 W.R. 802.

Landlord and Tenant:—

- (xviii.) **C. A.**—*Bankruptcy of Lessee—Disclaimer—Sub-lessee.*—Decision of Q. B. Div. (see *Landlord and Tenant* xiv., p. 92) reversed.—*Smalley v. Hardinge*, 44 L.T. 503; 29 W.R. 554.

- (xix.) **Ch. Div. M. R.**—*Covenant Affecting Lessor's Title—Constructive Notice*—37 & 38 Vict., c. 78, s. 2.—A lessee has constructive notice of all the contents of deeds affecting the lessor's title, when the existence of such deeds and the fact of their affecting the lessor's title are necessarily within his knowledge; and this rule is unaffected by sec. 2 of Vendor and Purchaser Act, 1874.—*Patman v. Harland*, L.R. 17 Ch. D. 353; 44 L.T. 728; 29 W.R. 707.
- (xx.) **C. A.**—*Fixtures—Signboard of Inn—Fixtures of Previous Tenant*.—When a tenant has put up fixtures and leaves them attached to the freehold, and a new lease is granted to another lessee, the fixtures do not become the property of the new tenant. Decision of C. J. B. (see *Landlord and Tenant* xi., p. 57) reversed.—*Ex parte Baroness Willoughby De Eresby, Re Thomas*, 29 W.R. 527.
- (xxi.) **Q. B. Div.**—*Fraudulent Removal of Goods—Appeal from Justices*—11 Geo. II., c. 19, ss. 4, 5; 12 & 13 Vict., c. 45, s. 1; 42 & 43 Vict., c. 49, ss. 31, 32.—An appeal from an order of justices, under 11 Geo. II., c. 19, ss. 4, 5, by a person adjudged guilty of fraudulently removing goods to prevent a distress, is subject to the regulations comprised in secs. 31, 32, of Summary Jurisdiction Act, 1879; and therefore notice of appeal must be given within seven days after decision appealed against.—*Regina v. Shropshire Justices*, L.R. 6 Q.B.D. 669; 50 L.J. M.C. 72; 29 W.R. 587.
- (xxii.) **Ch. Div. K. J.**—*Lease—Renewal—Existing Breach of Covenant—Waiver*.—A lease contained a covenant by landlord to renew on lessee giving six months notice before expiration of lease. The lessee gave notice, but at that time and at expiration of lease there was an existing breach of a covenant by the lessee to paint: *Held* that the lessee could not enforce the covenant to renew; and that acceptance of rent by the landlord was no waiver of the breach.—*Bastin v. Bidwell*, 44 L.T. 742.
- (xxiii.) **Ch. Div. V. C. B.**—*Restrictive Covenant—Sale of Lots—Lessee—Notice*.—The purchaser of a freehold lot on a building estate entered into a covenant with the vendors and the owners of the other lots not to retail beer: *Held* that a sub-lessee, who had no notice of the covenant, was bound by it.—*Thornwell v. Johnson*, 44 L.T. 768; 29 W.R. 677.

Lands Clauses Act:—

- (xi.) **Ch. Div. M. R.**—*Compulsory Purchase—Trustee with Power of Sale—Interest on Purchase Money*.—If a company serve notice to treat on a life-tenant of lands, and the matter proceeds in the usual course to arbitration and award, the company cannot require a conveyance from trustees having a power of sale with consent of life-tenant. Interest is payable by the company on the purchase-money from the time when they might have taken possession.—*Pigott v. G. W. Rail. Co.*, 29 W.R. 727.
- (xii.) **C. A.**—*Costs—Adverse Litigation*.—Costs of taking accounts between mortgagor and mortgagee of lands taken compulsorily are not costs occasioned by litigation between adverse claimants within sec. 80 of Lands Clauses Act, 1845.—*Re Bareham*, L.R. 17 Ch.D. 329; 29 W.R. 525.

Licensed House:—

- (i.) **Q. B. Div.**—*Death before Expiration of Licence—Assignment after Expiration—Application to Special Sessions*—9 Geo. IV., c. 61, s. 14.—The power of granting a licence at special sessions, under 9 Geo. IV., c. 61, s. 14, to a new tenant, where a person duly licensed has died during the continuance of his licence, extends only to the period for which the former tenant's licence would have lasted.—*White v. Coquetdale Ward Justices*, 44 L.T. 715.

- (ii.) **Q. B. Div.**—*Prohibited Hours—Excise Licence*—37 & 38 Vict., c. 49, ss. 3, 9.—The provisions of secs. 3, 9, of Licensing Act, 1874, are not limited to cases of holders of justices' licences.—*Martin v. Barker*, 29 W.R. 789.

Lord Mayor's Court:—

- (ii.) **H. L.**—*Foreign Attachment—Corporation Aggregate*.—The process against a garnishee to enforce obedience to the jurisdiction of the Lord Mayor's Court in foreign attachment, cannot be applied to a corporation aggregate. Decision of Court of Appeal (see *Lord Mayor's Court* i., p. 58) affirmed.—*Mayor of London v. London Joint Stock Bank*, L.R. 6 App. 893.

Lunacy:—

- (vi.) **Q. B. Div.**—*Lunatic Charged with Crime in India—Removal to England*—14 & 15 Vict., c. 81, s. 1.—M., a European British subject in India, shot a native, and the magistrate to whom this fact was reported without making a formal inquiry, ordered an inquiry as to M.'s sanity, and reported to the Madras Government that M. was insane: Held that M. might, by virtue of 14 & 15 Vict., c. 81, s. 1, be lawfully removed to England, and confined in a lunatic asylum during Her Majesty's pleasure.—*Re Maltby*, L.R. 7 Q.B.D. 18; 50 L.J. Q.B. 413; 44 L.T. 711; 29 W.R. 678.
- (vii.) **C. A.**—*Payment of Dividends to Attorney of Curator—Order on Companies*.—The curator of the property of a lunatic residing in Malta, having authorized a person residing in England to receive dividends of shares in Companies and of Consols belonging to the lunatic, the Court ordered that the companies and the Bank of England should be at liberty to pay accrued and future dividends to the curator's attorney.—*Re Baynes*, 44 L.T. 322.

Metropolitan Management:—

- (vi.) **H. L. Div.**—*Metropolitan Asylum District—Small Pox Hospital—Nuisance*—30 & 31 Vict., c. 6.—The owners of land adjoining the Hampstead Small Pox Hospital brought an action against the managers of the Metropolitan Asylum District for damages for injuries sustained in consequence of the erection of the hospital, and the jury found that the hospital was a nuisance, occasioning damage to plaintiffs, and that, assuming the defendants were legally entitled to erect and carry on the hospital, they had not done so with proper care and skill: Held that plaintiffs were entitled to a verdict with costs, and an injunction to restrain the carrying on of the hospital so as to be a nuisance.—*Managers of Metropolitan Asylum District v. Hill*, L.R. 6 App. 193; 50 L.J. Q.B. 353; 44 L.T. 653; 29 W.R. 617.
- (vii.) **Q. B. Div.**—*New Street—House and land abutting on Chapel*—18 & 19 Vict., c. 120; 25 & 26 Vict., c. 102.—A chapel vested in trustees and which abutted on a new street was registered as a place of religious worship, but had not been consecrated; and there was no dedication of the land in perpetuity: Held that the trustees were liable to contribute to the expenses of the new street either under 18 & 19 Vict., c. 120, s. 105, or 25 & 26 Vict., c. 102, s. 77.—*Caiger v. Vestry of St. Mary Islington* 50 L.J. M.C. 59; 44 L.T. 605; 29 W.R. 538.

Mines:—

- (vii.) **H. L.**—*Injury to Surface*.—A mining lease provided that lessee might work the mines in the usual and most approved way, and should have liberty to enter upon the land and do and execute all such acts, works and

things upon, in, or under or above the premises as should be necessary for working the mines: *Held* that the lessee was not entitled so to work the mines as to let down the surface.—*Davis v. Treharne*, L.R. 6 App. 460.

Mortgage:—

- (xxiii.) **Q. B. Div.**—*Assignment—Charge—Judicature Act, 1873, s. 25 (6).*—A mortgaged property to B. to secure £1,380 and covenanted to pay the debt. B. assigned the debt and premises to C. to secure repayment of advances not exceeding £1,200; *Held* that this was an assignment purporting to be by way of charge only, and therefore not within the operation of sec. 25, sub-sec. 6 of Judicature Act, 1873.—*National Provincial Bank v. Harle*, L.R. 6 Q.B.D. 626; 50 L.J. Q.B. 437; 44 L.T. 585; 29 W.R. 564.
- (xxiv.) **C. J. B.**—*Attornment Clause—Distress—Bankruptcy.*—Rent secured by an attornment clause in a mortgage deed is a security for the principal as well as the interest of the mortgage debt.—*Ex parte Tempest Re Betts*, 44 L.T. 616; 29 W.R. 668.
- (xxv.) **Ch. Div. K. J.**—*Consolidation—Building Society—Special Covenant—Second Mortgage.*—*Held* that a building society whose rules contained a provision entitling them to consolidate members, mortgages, had a right to consolidate against a second mortgagee who had acted as solicitor to the mortgagor on his making the first mortgage to the society which contained an express covenant to observe the society's rules.—*Andrews v. City Building Society*, 44 L.T. 641.
- (xxvi.) **Ch. Div. F. J.**—*Mortgagee in Possession—Power of Sale—Second Mortgage.*—A mortgage by H. to defendant contained a power of sale, which was not to be exercised except after default made for three months after notice to H. or his assigns to pay off, and a proviso that defendant or his agent should be at liberty to take the rents and thereout make reasonable payments. T., who had collected the rents for H., continued to collect them after the mortgage and paid defendant his interest. Plaintiff took a second mortgage of which defendant had notice: *Held* that defendant was a mortgagee in possession, and that he could not sell without first giving notice to plaintiff.—*Hoole v. Smith*, L.R. 17 Ch. D. 434; 29 W.R. 601.
- (xxvii.) **Ch. Div. V. C. B.**—*Priorities—Fictitious Deeds—Legal Estate.*—Property was conveyed to M. in trust for D. D. then prepared a fictitious lease of the property by which T. purported to demise it to M., and M. with D.'s connivance demised the property subject to this lease by way of mortgage to Q. Subsequently M. and D. procured a loan from S. on a deposit of the genuine title deeds: *Held* that S.'s mortgage ranked in priority to Q.'s.—*Keate v. Phillips*, 44 L.T. 731; 29 W.R. 710.
- (xxviii.) **Ch. Div. M. R.**—*Right to Redeem—Partial Possession—Absence beyond Seas—3 & 4 Will. IV., c. 27, ss. 16, 28.*—The rule that no lapse of time barred the right of mortgagor of lands to redeem the whole provided he held possession of part has been abolished by sec. 28 of 3 & 4 Will. IV., c. 27. Sec. 16 of that Act does not apply as between mortgagor and mortgagee.—*Kinsman v. Rouse*, L.R. 17 Ch. D. 104; 50 L.J. Ch. 486; 44 L.T. 597; 29 W.R. 627.
- (xxix.) **Ch. Div. K. J.**—*Sale by First Mortgagee—Second Mortgagee—Constructive Trust—Statute of Limitations.*—On a sale by a mortgagee there is no express trust of the purchase-moneys received by him in favour of mortgagor. There is a constructive trust of the surplus only, and after the expiration of the statutory period the Court will not allow evidence to be gone into to show that there was a surplus for the purpose of raising such trust.—*Banner v. Bertridge*, 44 L.T. 680.

Municipal Law :—

- (x.) **Q. B. Div.**—*Burial—Dead Bodies Cast on Shore—Tidal River*—48 Geo. III., c. 75, s. 1.—The direction in sec. 1 of 48 Geo. III., c. 75, to the overseers of parishes to bury dead bodies cast on shore from the sea does not extend to bodies cast on shore from a tidal river.—*Woolwich Overseers v. Robertson*, L.R. 6 Q.B.D. 654; 50 L.J. M.C. 87; 44 L.T. 747.
- (xi.) **Q. B. Div.**—*Rate—Assessment Committee—Appeal to Quarter Sessions*—27 & 28 Vict., c. 39, s. 2.—Held that an Assessment Committee which had appeared as respondent at Special Sessions, under 27 & 28 Vict., c. 39, s. 2, was entitled to appeal to Quarter Sessions in the name of the Guardians against the decision at Special Sessions.—*Regina v. Montgomeryshire Justices*, 50 L.J. M.C. 52; *Llanidloes Guardians v. Pryce Jones*, 44 L.T. 810; 29 W.R. 806.
- (xii.) **C. A.**—*Rate—Successive Occupation—Liability—Bridge—Extinction of Tolls*—32 & 33 Vict., c. 41, s. 16.—A bridge company which was assessed to the rates in P., transferred its property to the Metropolitan Board of Works under the provisions of an Act requiring the Board to keep the bridge open free of toll. At the time of transfer a rate to which the company was rated was not wholly discharged: Held that the Bridge company continued liable in respect of the rate, and that the Board was not liable.—*Hare v. Putney Overseers*, 50 L.J. M.C. 81; 29 W.R. 721.
- (xiii.) **Q. B. Div.**—*Repair of Sewer—Statutory Duty—Negligence.—Defendants were under local Acts empowered to construct and repair sewers: Held that they were under a legal liability to use their powers so as to keep the sewers in proper order.*—*Fleming v. Manchester Corporation*, 44 L.T. 517.

Negligence :—

- (iii.) **Q. B. Div.**—*Job Master—Defect in Carriage—Warranty of Fitness.*—A job master who lets out a carriage for hire is bound to supply one as fit for the purpose for which it is hired as care and skill can render it, and is liable for damage arising from a defect in it, though he might reasonably have been ignorant of the defect.—*Hyman v. Nye*, L.R. 6 Q.B.D. 685.

Nuisance :—

- (i.) **Ch. Div. K. J.**—*Liability for Acts of Public—Probable Consequence.*—Where the occupier of lands so deals with them that the public are induced to use them in such a manner as to cause a nuisance, he will be responsible for such nuisance, though it arise without any license or invitation on his part.—*Chibnall v. Paul*, 29 W.R. 536.

Parent and Child :—

- (i.) **Ch. Div. F. J.**—*Undue Influence—Purchase for Value—Notice.*—A mortgage by persons over age but not fully emancipated to secure a debt of their father, the same solicitor acting for parent and children, was upheld in favour of the mortgagees, but declared not binding in favour of the father.—*Bainbrigg v. Brown*, 50 L.J. Ch. 522; 44 L.T. 705; 29 W.R. 782.

Partition :—

- (viii.) **Ch. Div. V. C. H.**—*Request for Sale—Married Woman*—39 & 40 Vict., c. 17, s. 6.—In a partition action when a married woman is plaintiff, her request for sale should be made by her counsel, instructed by a person authorized by her in that behalf.—*Grange v. White*, 29 W.R. 718.

Partnership:—

- (vii.) **C. A.**—*Dissolution on Equitable Grounds—Terms.*—Where a dissolution of partnership is decreed on equitable grounds, it should date from the judgment; and the arrangement of terms, including apportionment of premiums, is a matter of judicial discretion.—*Lyon v. Tweddell*, 29 W.R. 689.

Patent:—

- (vi.) **C. A.**—*Infringement—Agent for Exportation.*—Decision of V. C. B. (see *Patent ii.*, p. 60) reversed.—*Nobel's Explosives Co. v. Jones, Scott & Co.*, 44 L.T. 593.

Poor Law:—

- (ix.) **Q. B. Div.**—*Bastardy—Maintenance Order—Marriage of Mother.*—A bastardy order obtained under 35 & 36 Vict., c. 65, s. 8, is not revoked by the subsequent marriage of the mother.—*Sotheran v. Scott*, L.R. 6 Q.B.D. 518; 50 L.J. M.C. 50; 44 L.T. 522; 29 W.R. 666.
- (x.) **Q. B. Div.**—*Bastardy—Maintenance Order—Marriage of Mother.*—A bastardy order can be enforced against the putative father after the mother's marriage; and the fact that her husband is capable of maintaining the child makes no difference.—*Hurdy v. Atherton*, 44 L.T. 776; 29 W.R. 788.
- (xi.) **Q. B. Div.**—*Husband and Wife—Wife's Adultery—31 & 32 Vict., c. 122, s. 33.*—A husband is not liable to be ordered, under 31 & 32 Vict., c. 122, s. 33, to maintain a wife with whom he has ceased to cohabit, in consequence of her adultery.—*Culley v. Charman*, L.R. 7 Q.B.D. 89; 29 W.R. 803.
- (xii.) **Q. B. Div.**—*Maintenance—Married Woman—Separate Estate—Grandchildren.*—43 Eliz., c. 2, s. 7; 33 & 34 Vict., c. 93, s. 14.—A woman, whose husband is alive, is not liable under the Poor Law Acts to contribute to the support of grandchildren, though she have separate estate.—*Coleman v. Birmingham Overseers*, L.R. 6 Q.B.D. 615; 50 L.J. M.C. 52; 44 L.T. 578; 29 W.R. 715.
- (xiii.) **Q. B. Div.**—*Settlement—Children under Sixteen—39 & 40 Vict., c. 61, s. 35.*—Legitimate children under sixteen take the settlement of their widowed mother, though such settlement be a derivative one.—*Hollingbourne Union v. West Ham Union*, L.R. 6 Q.B.D. 580; 50 L.J. M.C. 74; 44 L.T. 520; 29 W.R. 629.
- (xiv.) **Q. B. Div.**—*Settlement—Parish—39 & 40 Vict., c. 61, s. 34.*—Residence for three years in different parishes in the same union does not confer a settlement under sec. 34 of Divided Parishes Act.—*Plomesgate Union v. West Ham Union*, L.R. 6 Q.B.D. 576; 50 L.J. M.C. 51; 44 L.T. 610; 29 W.R. 630.
- (xv.) **C. A.**—*Settlement—Residence in Charitable Institution—9 & 10 Vict., c. 66, s. 1; 39 & 40 Vict., c. 61, s. 4.*—Decision of Q. B. Div. (see *Poor Law viii.*, p. 96) affirmed.—*Fulham Guardians v. Isle of Thanet Guardians*, 44 L.T. 678; 29 W.R. 723.

Power of Appointment:—

- (v.) **Ch. Div. M. R.**—*Appointment by Will—Real Estate—Failure—Residuary Devise—1 Vict., c. 26, s. 25.*—Sec. 25 of Wills Act, 1837, applies to the case of an invalid appointment of real estate under a power created prior to date of that Act.—*Frems v. Clement*, 44 L.T. 399.
- (vi.) **Ch. Div. M. R.**—*Partial Invalidity—Postponed Enjoyment—Intermediate Income.*—Testatrix having a limited power of appointment

over a fund, appointed it to an infant, not an object of the power, on his attaining twenty-one, and if he should die during infancy then to S., who was an object of the power: *Held* that the income of the fund till the infant died or attained majority would go with the corpus, in the one case to S., in the other as in default of appointment.—*Long v. Ovenden*, L.R. 16 Ch. D. 691; 50 L.J. Ch. 314; 44 L.T. 462; 29 W.R. 709.

- (vii.) **Ch. Div. K. J.**—*Power created subsequent to Will*—1 *Vict.*, c. 26, ss. 24, 27.—Real estate was by a settlement conveyed to trustees to sell and pay the proceeds as A. should by deed or will appoint. By a second settlement A. appointed that the trustees should hold the proceeds of sale in trust for such persons as she should by will appoint. By her will, made before the second settlement, she in pursuance of the power in the first settlement, appointed the real estate to her three sons: *Held* that the property did not pass under the will.—*Thompson v. Simpson*, 50 L.J. Ch. 461; 44 L.T. 710.

Practice:—

- (cxlix.) **Ch. Div. F. J.**—*Accounts—Direction to Chief Clerk*—15 & 16 *Vict.*, c. 86, s. 54.—Where an account has been directed to be taken, the Court has jurisdiction, on subsequent summons, to give a direction as to the principle on which it shall be taken.—*Shaw v. Brown*, 44 L.T. 339.
- (cl.) **C. A.**—*Appeal—Costs*.—In an action for infringement of copyright, the judge held that plaintiff had established his claim, but as defendant had discontinued the infringement before the trial, made no order except that defendant should pay the costs: *Held* that defendant was entitled to appeal from this order.—*Dicks v. Yates*, 44 L.T. 660.
- (cli.) **C. A.**—*Appeal—Death of Appellant—Revivor*—Ord. 50, r. 4.—Where an appellant dies pending an appeal, his personal representative may obtain leave to carry on the proceedings by order on petition of course at the Rolls.—*Ransom v. Patten*, 44 L.T. 688.
- (clii.) **C. A.**—*Appeal—Dismissal—Appeal by one Plaintiff*.—Where an action by two or more plaintiffs is dismissed, any one plaintiff may appeal.—*Beckett v. Attwood*, 44 L.T. 660; 29 W.R. 796.
- (cliii.) **C. A.**—*Appeal—Time—Refusal of leave to Amend*—Ord. 38, r. 15.—When application for leave to amend pleadings is refused at the trial, the refusal forms part of the judgment, and on appeal from the judgment the Court of Appeal can give leave to amend. It is contrary to the practice to insert in the judgment any mention of the refusal.—*Laird v. Briggs*, L.R. 16 Ch. D. 665; 44 L.T. 361.
- (cliv.) **Q. B. Div.**—*Attachment of Debt—Garnishee Order—Partnership Firm*—Ord. 45, r. 2.—A garnishee order will not be granted on partners in the name of the firm.—*Walker v. Rooke*, L.R. 6 Q.B.D. 631; 50 L.J. Q.B. 470.
- (clv.) **P. D. A. Div.**—*Commission for Examination—Probate Action*—20 & 21 *Vict.*, c. 77, s. 26.—Under sec. 26 of Probate Act, 1857, the Court can order a commission to issue to examine a person as to her knowledge of a testamentary document.—*Banfield v. Pickard*, L.R. 6 P.D. 33; 29 W.R. 613.
- (clvi.) **P. D. A. Div.**—*Costs—Administrator and Receiver pending Suit—Appeal*.—The costs of an administrator and receiver pending suit were allowed from date of appointment until the dismissal of an appeal from the decree in the action.—*Taylor v. Taylor*, L.R. 6 P.D. 29; 50 L.J. P.D.A. 45.
- (clvii.) **C. A.**—*Costs—Co-Defendant—Form of Order*.—The old practice of ordering a successful plaintiff to pay costs of a defendant, to be recovered from the principal defendant, is no longer to be used. The

proper order is to make the principal defendant pay the costs directly.—*Rudow v. Great Britain Life Assurance Society*, 50 L.J. Ch. 504; 44 L.T. 688; 29 W.R. 585.

- (olvi.) **Ch. Div. F. J.**—*Costs—Interrogatories Disallowed*.—Where an order was obtained by plaintiff for further answers to two interrogatories, but nine others were disallowed, the costs of adjournment into Court were ordered to be costs in the cause.—*Alison v. Alison*, 44 L.T. 547; 29 W.R. 732.
- (olx.) **P. D. A. Div.**—*Costs—Probate—Codicil proved by Legatee*.—A legatee successfully propounding a codicil is entitled to the same costs as an executor under like circumstances.—*Wilkinson v. Corfield*, L.R. 6 P.D. 27; 60 L.J. P.D.A. 44; 29 W.R. 613.
- (olx.) **Ch. Div. F. J.**—*Costs—Sequestration for—Ord. 47, r. 2*.—Plaintiff having failed to comply with an order for payment of costs, and having no property except an army pension, a four-day order was made for payment of the costs, and in default leave given to issue a writ of sequestration against plaintiff.—*Snow v. Bolton*, L.R. 17 Ch. D. 433; 44 L.T. 571; 29 W.R. 583.
- (olxi.) **C. A.**—*Costs—Taxation—Apportionment*.—*Held*, reversing the decision of C. P. Div. (see *Practice* cxxiv., p. 99) that plaintiff was entitled to the general costs of the action.—*Sparrow v. Hill*, 29 W.R. 705.
- (olxii.) **C. A.**—*Costs—Taxation—Counter-Claim*.—*Held*, reversing the decision of Ex. Div. (see *Practice* lxxvii., p. 68) that plaintiff was entitled to the costs of the action.—*Baines v. Bromley*, L.R. 6 Q.B.D. 691; 60 L.J. Ex. 465; 29 W.R. 706.
- (olxiii.) **Ch. Div. M. R.**—*Costs—Taxation—Party and Party—6 & 7 Vict., c. 73, s. 38*.—On the withdrawal of a winding-up petition the solicitor of the company gave a personal undertaking to pay the petitioners' taxed costs, and afterwards obtained an order on the company's petition, under sec. 38 of Solicitors Act, 1843, for taxation: *Held*, that the order was irregular.—*Re Grundy, Kershaw & Co.*, L.R. 17 Ch. D. 108; 50 L.J. Ch. 467; 44 L.T. 541; 29 W.R. 581.
- (olxiv.) **Ch. Div. M. R.**—*Costs—Taxation—Transfer of Mortgage—Right to Retain Copies*.—A solicitor acting in the transfer of a mortgage, transferred at instance of mortgagor, for 5 persons interested in the mortgage moneys, charged the mortgagors with five copies of the draft transfer: *Held* that he was only entitled to charge for one copy. A mortgagee or transferee on being paid off has no right to keep copies of the mortgage or transfer.—*Re Wade & Thomas*, L.R. 17 Ch. D. 348; 44 L.T. 599; 29 W.R. 625.
- (olxv.) **Ch. Div. M. R.**—*Costs—Taxation—Winding-up of Company—Representative Summons*.—The costs of summons by a contributory in the winding-up of a company, which has been selected as a representative case, are not to be allowed as between solicitor and client.—*Re The Mutual Society*, 50 L.J. Ch. 400.
- (olxvi.) **C. A.**—*Costs—Third Party—Ord. 16, r. 18*.—Where third parties had been brought in under Ord. 16, r. 18, and on the trial judgment was given for defendants, the Court refused to make any order as to the costs of the third parties.—*Witham v. Vane*, 44 L.T. 718.
- (olxvii.) **Ch. Div. F. J.**—*Costs—Withdrawal of Defence—Ord. 23, r. 1*.—By an order in an action one of two defendants was allowed to withdraw his defence on the terms of his paying to plaintiffs their costs so far as occasioned by that defence down to date of application for leave to

withdraw: *Held* that this relieved the withdrawing defendant from the general costs of the action.—*Real & Personal Advances Co. v. McCarthy*, 44 L.T. 514.

- (clxviii.) **Q. B. Div.**—*Cross Action—Different Issues—Stay of Proceedings.*—A. brought an action against B. for detention of a ship and for freight of cattle, and B. brought an action against A. claiming a much larger amount for loss of the said cattle through A.'s negligence. The writs were issued on same day, but A.'s claim was served first. The Court refused to stay B.'s action and give him leave to counter-claim.—*Adamson v. Tuff*, 44 L.T. 420.
- (clxix.) **Ch. Div. V. C. H.**—*Default of Appearance—Setting Aside Judgment.*—*Costs—Ord. 29, r. 14.*—Leave given to defendant to set aside a judgment by default and liberty to appear and defend, on the terms of paying plaintiff his costs subsequent to delivery of statement of claim.—*Williams v. Brisco*, 29 W.R. 713.
- (clxx.) **Ch. Div. F. J.**—*Defendant of Unsound Mind—Guardian—Ord. 13, r. 1.*—One of the defendants to an action was of unsound mind, not so found by inquisition. He did not appear and no relief was asked against him: *Held* that plaintiff was not compelled to apply for the appointment of a guardian of the defendant.—*Taylor v. Pede*, 44 L.T. 514; 29 W.R. 627.
- (clxxi.) **C. A.**—*Discovery—Inspection of Documents—Deceased Lunatic.*—A lunatic having died intestate, defendant in an action to recover his real estate, who produced *prima facie* evidence that he was heir-at-law of the lunatic *ex parte paternâ*, was held entitled to an order to inspect documents relating to the estate in the custody of the Registrars of Lunacy, though it was sworn and not contradicted that the lands had descended *ex parte maternâ*.—*Re Smyth*, L.R. 16 Ch.D. 673; 29 W.R. 585.
- (clxxii.) **C. A.**—*Discovery—Inspection of Documents—Privilege.*—Where a solicitor is consulted by a client in a matter as to which no dispute has arisen, and he applies to a third party for information to enable him to give legal advice to the client, the communications between the solicitor and third party are not privileged in subsequent legal proceedings.—*Wheeler v. Le Marchant*, 44 L.T. 632.
- (clxxiii.) **Ch. Div. F. J.**—*Discovery—Interrogatories—Administration.*—In an administration action, persons beneficially entitled may require a defendant executor, before close of pleadings, to answer interrogatories as to the accounts of the estate.—*Alison v. Alison*, 44 L.T. 547; 29 W.R. 732.
- (clxxiv.) **Ch. Div. V. C. B.**—*Discovery—Interrogatories—Insufficient Answers—Ord. 31, r. 10.*—Where the whole of the answers are objected to, the summons for further answer need not specify the interrogatories *seriatim*.—*Furber v. King* (2), 50 L.J. Ch. 496; 29 W.R. 536.
- (clxxv.) **Ch. Div. V. C. H.**—*Evidence—Affidavit—Motion for Judgment—Ord. 37, r. 1.*—On motion for judgment the Court has no power to order that the evidence shall be taken by affidavit.—*Ellis v. Robbins*, 50 L.J. Ch. 512.
- (clxxvi.) **Ch. Div. F. J.**—*Evidence—Attestation of Notary Public—15 & 16 Vict., c. 86, s. 22.*—The documents in respect of which, under sec. 22 of the Chancery Procedure Act, 1852, judicial notice is to be taken in the Chancery Div. of the seal or signature of a notary public, include a deed of release attested by a Canadian notary public.—*Brooke v. Brooke*, 50 L.J. Ch. 528; 44 L.T. 512.

- (clxxvii.) **Ch. Div. M. R.**—*Official Referee—Order for Production of Documents*—Ord. 36, r. 32.—An official referee cannot make an order for production of documents.—*Dauvillier v. Myers*, L.R. 17 Ch.D. 346; 29 W.R. 535.
- (clxxviii.) **C. A.**—*Parties—Bankruptcy of Defendant—Costs*—Ord. 50, rr. 2, 3.—Where defendant in an action becomes bankrupt, and the the question in dispute is one of a mere money demand capable of determination by the Bankruptcy Court, the trustee will not be joined as defendant, nor will the Court make any order as to costs already incurred.—*Barter v. Dubeux*, 44 L.T. 596; 29 W.R. 622.
- (clxxix.) **C. A.**—*Parties—Third Party Notice—Application for Direction*—Ord. 16, rr. 18, 21.—Decision of Q. B. Div. (see *Practice* cxxxv., p. 100) affirmed.—*Schneider v. Batt*, 50 L.J. Q.B. 389.
- (clxxx.) **Ch. Div. F. J.**—*Pleading—Amendment after Judgment*—Ord. 41a; 59 r. 2.—After an order in a partition action had been made for sale and partition of property referred to in the order as the hereditaments described in the statement of claim, an error in the description was discovered. Leave was given to amend the claim, and judgment was ordered to be post-dated as of a day after the amendment.—*Winkley v. Winkley*, 44 L.T. 572; 29 W.R. 628.
- (clxxxi.) **Q. B. Div.**—*Reference—Charge of Misconduct—Judicature Act, 1873, s. 57.*—In an action for wrongful dismissal involving matters of account, when defendant justified on grounds of plaintiff's misconduct: Held that an order referring the issues to an official referee was rightly made.—*Sacker v. Rayzine*, 44 L.T. 308.
- (clxxxii.) **C. A.**—*Service out of Jurisdiction—Slander*—Ord. 11, r. 1.—Leave will not be given to serve a writ out of the jurisdiction in an action for special damage resulting from a slander spoken out of the jurisdiction.—*Bree v. Marescaux*, 44 L.T. 644; 765.
- (clxxxiii.) **C. A.**—*Set-off and Counter-claim—Judicature Act, 1873, s. 24 (7)*—Ord. 19, rr. 2, 3, 8.—Where defendant counter-claims, and the Court holds that the nature of plaintiff's claim is such that no set-off can be allowed, defendant is not entitled to separate judgment on his counter-claim.—*Gathercole v. Smith*, 29 W.R. 577.
- (clxxxiv.) **Ch. Div. V. C. B.**—*Substituted Service*—Ord. 9, r. 2.—Substituted service of writ will not be ordered unless reasonable grounds are shown for supposing that it will come to the notice of the person served.—*Furber v. King* (1), 29 W.R. 535.
- (clxxxv.) **Ch. Div. V. C. B.**—*Transfer of Action—Lord Mayor's Court—Corporation Aggregate.*—An action was brought in the Lord Mayor's Court against a company and S. to restrain the company from paying money claimed by plaintiff to S., and an interim injunction was granted. On motion by the company the proceedings were transferred to the Chancery Div.—*Vickers v. Stevens*, 44 L.T. 679; 29 W.R. 562.
- (clxxxvi.) **Ch. Div. F. J.**—*Trial—Jury—Specific Performance*—Ord. 36, rr. 3, 26.—An action for specific performance was directed, against wish of defendant, to be tried without a jury.—*Usil v. Whelpton*, 50 L.J. Ch. 511; 29 W.R. 799.

Principal and Agent:—

- (viii.) **Ch. Div. F. J.**—*Account—Assignment to Third Party.*—When an assignment is made of a share of profits arising from the working of a patent by licensees, the assignee is entitled to an account from the licensees; but if he seeks such account he must place himself in the position of the assignor by offering to pay the licensees anything that

may be due to them from the assignor, and the account must be taken once for all in the presence of all parties interested.—*Bergmann v. Macmillan*, L.R. 17 Ch. D. 423.

- (ix.) **C. A.**—*Employment of Agent Ignorant of Defect—Misrepresentation—Fraud.*—Where a principal employs an agent ignorant of the truth, in order that such agent may make a false statement believing it to be true, and may so deceive the party with whom he is dealing, the agent's representation amounts to a fraudulent misrepresentation by the principal.—*Ludgater v. Love*, 44 L.T. 694.
- (x.) **C. A.**—*Undisclosed Principal—Sale—Contract.*—Decision of Q. B. Div. (see *Principal and Agent* iii., p. 31) reversed.—*New Zealand Land Co. v. Watson (Reeston)*, 50 L.J. Q.B. 433; 44 L.T. 675; 29 W.R. 694.
- (xi.) **C. A.**—*Unincorporated Society—Borrowing Powers—Authority.*—Held, varying decision of C. P. Div. (see *Principal and Agent* iv., p. 31) that the directors were liable but the society not liable.—*Chapleo v. Brunswick Building Society*, L.R. 6 Q.B.D. 696; 50 L.J. C.P. 372; 44 L.T. 449; 29 W.R. 519.

Principal and Surety:—

- (iv.) **C. A.**—*Co-Sureties—Contribution.*—A surety cannot call upon his co-surety for contribution until he has paid more than his proportion of the debt due to the principal creditor, provided that the co-surety has not been released by the creditor.—*Ex parte Snowden, Re Snowden*, L.R. 17 Ch. D. 44; 29 W.R. 654.
- (v.) **Ch. Div. F. J.**—*Co-Sureties—Right to Share of Security.*—Any security taken by one surety will, generally speaking, inure for the benefit of his co-sureties equally with himself.—*Steel v. Dixon*, 29 W.R. 735.

Probate:—

- (xi.) **P. D. A. Div.**—*Codicil—Erroneous Reference—Two Wills.*—Testator executed a will in 1877, and in 1878 he executed another will superseding the first. In 1880 he executed a codicil which, by a mistake of the solicitor who prepared it, was drawn as a codicil to the first will: Held that all three instruments must be admitted to probate.—*In the goods of Stedham*, 29 W.R. 743.
- (xii.) **P. D. A. Div.**—*Compromise of Action.*—In sanctioning arrangements between parties to probate causes, the Court does not intend to bind infants or other persons not *sui juris*.—*Norman v. Strains*, 50 L.J. P.D.A. 39; 29 W.R. 744.
- (xiii.) **P. D. A. Div.**—*Execution—Subsequent Alterations.*—The clause in a will appointing executors was written partly on the second and partly on the third side of a will. Afterwards testator altered the clause, but his signature and those of the witnesses appeared only opposite the alteration on the second side. Probate granted to all the alterations.—*In the goods of Wilkinson*, L.R. 6 P.D. 100.
- (xiv.) **P. D. A. Div.**—*Executor—Erroneous Description—Extrinsic Evidence.*—Extrinsic evidence admitted to show which of two persons was intended by testator to be his executor, the description in the will being erroneous and ambiguous.—*In the goods of Brake*, 50 L.J. P.D.A. 48; 29 W.R. 744.
- (xv.) **P. D. A. Div.**—*Married Woman Executrix—Grant to Attorney—20 & 21 Vict., c. 77, s. 79.*—The husband of a sole executrix of a will and universal legatee having objected to her taking probate, the Court made the grant to her attorney.—*Olerke v. Olerke*, L.R. 6 P.D. 103; 29 W.R. 823.

- (xvi.) **P. D. A. Div.**—*Revocation—Mutilation*.—Will found after death with signature and attestation clause cut off and folded inside the will: Held sufficient evidence of an *animus revocandi*.—*Magnesi v Hazelton*, 44 L.T. 586.

Public Health:—

- (xi.) **C. A.**—*Local Authority—Contract exceeding £50*—38 & 39 Vict., c. 55, ss. 174, 200.—Decision of Ex. Div. (see *Public Health* xiii., p. 103) reversed.—*Eaton v. Basker*, 50 L.J. Ex. 444; 44 L.T. 703; 29 W.R. 597.
- (xii.) **C. A.**—*Nuisance—Injunction—Transfer of Local Authority*—38 & 39 Vict., c. 55, s. 275.—In 1875 an injunction was granted against the corporation of B., as the local sanitary authority, restraining them from polluting a river. In 1877 the sanitary authority of the corporation and the sewage works were transferred to a district drainage board, under the provisions of the Public Health Act, 1875: Held that it was not competent in an action against the board to enforce the injunction obtained against the corporation.—*Attorney-General v. Birmingham District Drainage Board*, 29 W.R. 793.

Railway:—

- (xvii.) **C. A.**—*Liability to Fence Adjoining Lands—Release by Owner—Occupier*—8 Vict., c. 20, s. 68.—Decision of C. P. Div. (see *Railway* xiii., p. 104) affirmed.—*Corry v. G. W. Rail. Co.*, 50 L.J. C.P. 386; 44 L.T. 701; 29 W.R. 623.
- (xviii.) **Q. B. Div.**—*Passenger—Bye-Law—Validity—Divisibility*—8 Vict., c. 20, s. 103.—A bye-law of a railway company provided "any person travelling without permission in a carriage or by a train of a superior class to that for which his ticket is issued, is hereby subject to a penalty of 40s., and shall, in addition, be liable to pay his fare from the station where the train originally started, unless he shows that he had no intention to defraud." Held that the bye-law was divisible, and that the first part was bad, as it did not make intention to defraud necessary to the infliction of the penalty.—*Dyson v. L. & N. W. Rail. Co.*, L.R. 7 Q.B.D. 32; 50 L.J. M.C. 78; 44 L.T. 609; 29 W.R. 565.
- (xix.) **Q. B. Div.**—*Passenger Travelling in Superior Class to that for which Fare paid—Intent to Defraud*—8 Vict., c. 20, s. 103.—A passenger who travels in a carriage of a class superior to that for which he has taken his ticket, with intent to defraud the railway company of the difference between the fares, is liable to be convicted under 8 Vict., c. 20, s. 103, for travelling without having previously paid his fare.—*Gillingham v. Walker*, 44 L.T. 715.
- (xx.) **C. A.**—*Railway Commissioners—Jurisdiction—Arbitration Clause*—22 & 23 Vict., c. 59; 36 & 37 Vict., c. 48, s. 8.—The Railway Companies Arbitration Act, 1859, does not confer on railway companies any powers to refer to arbitration, not before possessed by them, and sec. 8 of Regulation of Railways Act, 1873, applies only to certain particular differences between companies which in any Act are required or authorised to be referred to arbitration.—*Great Western Rail. Co. v. Waterford and Limerick Rail. Co.*, 50 L.J. Ch. 513; 44 L.T. 723.
- (xxi.) **C. A.**—*Railway Commissioners—Jurisdiction—Fares in Excess of Limit*—17 & 18 Vict., c. 31, s. 2.—Held that the Railway Commissioners had no jurisdiction to entertain a complaint against a company of having demanded fares exceeding the limit fixed by statute.—*Great Western Rail. Co. v. Railway Commissioners*, 50 L.J. Q.B. 463.

Revenue:—

- (v.) **H. L.—Income Tax—Coal Mine—Deduction for Exhausted Pits—**5 & 6 Vict., c. 35; 29 Vict., c. 36, s. 8.—A tenant of coal mines is not entitled, in computing profits for assessment of income tax, to deduct from the gross profits a sum estimated to represent the capital expended in sinking pits which have been exhausted by the year's working.—*Coltress Iron Co. v. Black*, L.R. 6 App. 315; 29 W.R. 717.
- (vi) **Q. B. Div.—Income Tax—Foreign Telegraph Company—**16 & 17 Vict., c. 34, s. 2.—Held that a foreign telegraph company having marine cables in connection with the Post Office lines in England, and having offices in England for the transmission of messages, were chargeable with income tax on the balance of profits from their receipts in this country.—*Erichsen v. Last*, L.R. 7 Q.B.D. 12.
- (vii.) **Q. B. Div.—Income Tax—Revenue Applied to Specific Purpose.—**A docks and harbour board was directed by its statutes to apply receipts in certain specific ways, and such moneys were to be applied for no other purpose: Held that the board's revenue was not liable to income tax.—*Mersey Docks, &c., Board v. Lucas*, 50 L.J. Q.B. 449; 44 L.T. 645; 29 W.R. 606.
- (viii.) **Q. B. Div.—Inhabited House Duty—**41 Vict., c. 15, s. 13.—Part of a house was occupied by the owner for business purposes, part was occupied as a residence, and other parts were let and occupied for business purposes, and a care-taker and his wife resided in and attended to the house: Held that the parts occupied for business purposes were liable to inhabited house duty.—*Yorkshire Insurance Co. v. Clayton*, L.R. 6 Q.B.D. 557; 50 L.J. Q.B. 471; 44 L.T. 302; 29 W.R. 539.
- (ix.) **Q. B. Div.—Inhabited House Duty—Exemption—**41 Vict., c. 15, s. 13 (2).—Held that the Income Tax Commissioners were justified in exempting premises from inhabited house duty when they consisted mainly of warehouses, but a cashier with £200 a-year salary slept in a room in the premises.—*Rolfe v. Hyde & Co.*, L.R. 6 Q.B.D. 673; 50 L.J. Q.B. 481; 44 L.T. 775.
- (x.) **Q. B. Div.—Stamp Duty—Debenture on Promissory Note—**33 & 34 Vict., c. 97, s. 49.—Held that an instrument not under seal, issued by a company, headed debenture, and stamped as a promissory note, whereby the company promised to pay A. or order £100, and to pay the holder interest thereon, on presentation of coupons attached, was a debenture within the meaning of the Stamp Act, 1870.—*British India Steam Navigation Co. v. Inland Revenue Commissioners*, 44 L.T. 378; 29 W.R. 610.
- (xi.) **Q. B. Div.—Succession Duty—Appointment—**16 & 17 Vict., c. 51, ss. 2, 4, 18.—Testator, who died before the passing of the Succession Duty Act, 1853, bequeathed funds on trust for his daughter for life, remainder to whom she should appoint, in default to her next-of-kin; and legacy duty was paid on the fund at the rate of one per cent. After the passing of the Act, the daughter appointed in favour of her nieces, testator's grandchildren: Held that the nieces were liable to pay a duty of one per cent. on a succession derived from testator; and that the legacy duty paid had not discharged their liability.—*Attorney-General v. Mitchell*, L.R. 6 Q.B.D. 548; 50 L.J. Q.B. 406; 44 L.T. 580; 29 W.R. 683.
- (xii.) **Ch. Div. M. R.—Succession Duty—Settled Land—**16 & 17 Vict., c. 51, s. 42; 40 & 41 Vict., c. 18, s. 22.—Where land settled by an instrument containing no power of sale is sold by the Court under the

provisions of the Settled Estates Act, 1877, it thereby becomes freed from any liability to succession duty in respect of the uses of the settlement.—*Re Warner and Steel*, 29 W.R. 726.

Scotland, Law of:—

- (vii.) **H. L.—Agreement—Construction—Holograph Writing.**—Tenants of quarries agree with the landlord to construct a tramway on certain terms: *Held*, on the construction of the agreement, that the tramway was to pass outside the inclosing walls of the landlord's policy, and that the undertaking of the landlord to give the land required only amounted to an undertaking to give such rights in the land required as were vested in him. A landlord entered into an agreement with a tenant, the terms of which were dictated by the landlord to his factor, and the agreement was then signed by the tenant: *Held* not a valid holograph writ.—*Sinclair v. Caithness Flagstone Quarrying Co.*, L.R. 6 App. 340.
- (viii.) **H. L.—Clyde Navigation Trustees—Riparian Owner**—21 & 22 Vict., c. 149, ss. 76, 84.—The Clyde Navigation Trustees being empowered by 21 & 22 Vict., c. 149, to dredge the Clyde to a certain depth, cannot be interdicted from dredging ground which has been declared the property of a riparian owner subject to the rights of the public and the trustees.—*Lord Blantyre v. Clyde Navigation Trustees*, L.R. 6 App. 273.
- (ix.) **H. L.—Shareholders of Theatre—Right of Free Admission.**—Trustees for shareholders of a theatre granted in 1858 a disposition of the ground and buildings to B., subject to a perpetual annuity to each shareholder, and each shareholder was to be entitled to free admission to the theatre. The theatre was burnt down and rebuilt, and was then sold, the conveyance being granted subject to the real burdens and conditions specified in the original disposition, including the conditions as to allowing the shareholders the privileges to which they were entitled: *Held* that the privilege of free admission rested only on the personal obligation of the original donee and was confined to the theatre then existing.—*Scott v. Howard*, L.R. 6 App. 295.

Settlement:—

- (xv.) **C. A.—Marriage Settlement—After-acquired Property.**—In a marriage settlement it was witnessed that it was agreed and declared between and by the parties thereto, and the husband thereby covenanted that the husband would make and concur in making all such assurances as would vest in the trustees on the trusts of the settlement any estate which should during the marriage vest in wife or in husband in her right after marriage; the wife became entitled to property to her separate use: *Held* that she was not bound by the covenant.—*Duves v. Tredwell*, 44 L.T. 740; 29 W.R. 714, 793.

Ship:—

- (xli.) **C. A.—Charter-party—Deliver at Safe Port—Breach.**—Decision of P. D. A. Div. (see *Ship* ii., p. 35) reversed.—*The Alhambra*, L.R. 6 P.D. 68; 50 L.J. P.D.A. 36; 44 L.T. 637; 29 W.R. 655.
- (xlii.) **P. D. A. Div.—Charter-party—Measurement of Cargo.**—The general rule that cargo is to be paid for according to quantity delivered at port of discharge, must prevail in the absence of express contrary provisions in the charter-party.—*The Skandinav*, 50 L.J. P.D.A. 46.
- (xliii.) **P. D. A. Div.—Collision—Foreign Ship—Liability—Lex Loci.**—A collision took place on the high seas between a British and Spanish ship, and both sank. The English owners brought an action against the

Spanish owners who had an office in England, and defendants pleaded that by Spanish law there was no personal liability: *Held* a bad defence.—*The Leon*, 44 L.T. 618.

- (xiv.) **P. D. A. Div.**—*Collision—Regulations for Preventing—Infringement.*—A barque left port a few days before the Regulations for Preventing Collisions at Sea, 1879, came into operation: *Held* that the barque was, nevertheless, liable for not having on board a fog-horn of the sort required by Aft. 12 of the Regulations.—*The Love Bird*, L.R. 6 P.D. 80; 44 L.T. 650.
- (xlv.) **C. A.**—*Collision—Thames Navigation—Breach of Bye-Law.*—Decision of P. D. A. Div. (see *Ship* xix., p. 70) reversed.—*The Margaret*, L.R. 6 P.D. 76; 44 L.T. 291; 29 W.R. 533.
- (xlv.) **C. A.**—*General Average—Deck Cargo—Jettison—Liability of Shipowner.*—Defendants agreed to let to plaintiff the upper deck of their ship for a cargo of cattle for a particular voyage, the vessel not to be responsible for mortality or accident of any kind. On the voyage the master found it necessary, through stress of weather, to jettison the cattle: *Held* that defendants were not liable to plaintiff either by way of damages or general average.—*Wright v. Murwood*, L.R. 7 Q.B.D. 62; 29 W.R. 678.
- (xlvii.) **Q. B. Div.**—*General Average—Loss of Freight—Fire.*—A cargo of coals shipped to be delivered at S. on payment of freight, took fire spontaneously, in consequence of which part had to be thrown overboard and the rest was so wetted in putting out the fire that it had to be discharged and sold at a port of refuge. As no freight was payable there, the coals realised more than if sold at port of discharge: *Held* that the shipowner was entitled to general average contribution for loss of freight.—*Pirie v. Middle Dock Co.*, 44 L.T. 426.
- (xlviii.) **C. A.**—*Insurance—Freight—Option to Discharge Ship—Perils of the Seas.*—Plaintiffs' ship was chartered with the condition that freight was not to be payable in the event of the ship becoming unseaworthy. Plaintiffs insured the freight with defendants against perils of the seas. The ship struck on a rock and was damaged so as to require repairs and the charterers discharged the ship: *Held* that defendants were not liable on the policy.—*Inman Steamship Co. v. Bishhoff*, L.R. 6 Q.B.D. 648; 50 L.J. Q.B. 440; 44 L.T. 763; 29 W.R. 697.
- (xlix.) **Q. B. Div.**—*Insurance—Freight—Option of cancelling Charter-party—Risks incident to Steam Navigation.*—A charter-party provided that if the ship did not arrive at port of lading before a particular day charterers were to have the option of cancelling the charter-party. The owners insured the freight with defendants against all risks incident to steam navigation. Defendants did not know of the option to cancel in the charter-party. The ship owing to the failure of her machinery did not reach the port of lading till after the day named, and the charterers cancelled the charter-party: *Held* that defendants were not liable on the policy.—*Mercantile Steamship Co. v. Tyser*, L.R. 7 Q.B.D. 73; 29 W.R. 790.
- (l.) **P. D. A. Div.**—*Nautical Assessors.*—The Court should be guided by the advice of assessors only on matters of nautical science, and ought not to allow any advice given by them, which it does not agree with, to influence its decision.—*The Aid*, L.R. 6 P.D. 84; 50 L.J. P.D.A. 40; 29 W.R. 614.
- (ii.) **C. A.**—*Salvage—Pilotage.*—A ship having been driven out of her course was in great danger of being lost, and some pilots put off to assist her, and by means of preceding and signalling to her, led her

to a safe anchorage: *Held* that the services rendered by the pilots were salvage services.—*Akerblom v. Price*, 29 W.R. 797.

- (lii.) **H. L.**—*Tug and Tow—Damage—Contributory Negligence.*—When a vessel in tow of a steam tug is damaged by collision in consequence of the conduct of the tug, the owners of the latter cannot set up contributory negligence on the part of the vessel on the ground that the injury would have been avoided if the latter had been cast off when the injury was imminent.—*Spaight v. Tedcastle*, L.R. 6 App. 217; 44 L.T. 589; 29 W.R. 761.

Solicitor:—

- (x.) **Q. B. Div.**—*Lien for Costs—Charging Order*—23 & 24 Vict., c. 127, s. 28.—Defendant having paid money into Court, plaintiff's solicitor declined to proceed with the action except on terms to which plaintiff would not agree. Plaintiff obtained an order for change of solicitors, and afterwards his former solicitor obtained a Judge's order at Chambers charging the money in Court with his costs in the action: *Held* that the order was rightly made.—*Clover v. Adams*, L.R. 6 Q.B.D. 622.
- (xi.) **Ch. Div. K. J.**—*Lien for Costs—Production of Marriage Settlement.*—A solicitor who had prepared an ante-nuptial settlement on the instructions of the wife, was summoned by her as a witness in an action in which the terms of the deed were in dispute, and refused to produce the deed till his costs of preparing it were paid: *Held* that he was bound to produce it.—*Fowler v. Fowler*, 29 W.R. 800.
- (xii.) **Ch. Div. V. C. B.**—*Mortgage from Client—Unusual Provision.*—A client executed a mortgage to a solicitor containing unusual and onerous provisions. It appearing that the nature and effect of the provisions was fully explained to the client at the time: *Held* that they would not be set aside, but a bill of costs which had been signed by the client without independent advice was ordered to be re-opened and taxed.—*Jones v. Linton*, 44 L.T. 601.
- (xiii.) **C. P. Div.**—*Negligence—Breach of Duty—Double Retainer.*—When a solicitor is acting for a client who has brought an action in which judgment is reserved, and another client, who has a claim on the defendant in the action, applies to him for advice as to enforcing his claim, it is the duty of the solicitor not to act for the second client, if by so doing he will be likely to injure the position of the first client in case he recover judgment in the action.—*Barber v. Stone*, 50 L.J. C.P. 297.
- (xiv.) **Ch. Div. K. J.**—*Notice—Constructive Trustee—Liability.*—A solicitor who wrongfully, but in good faith, sold settled property: *Held* not to have such notice of the settlement as to render him personally liable as a constructive trustee.—*Williams v. Williams*, L.R. 17 Ch.D. 437; 44 L.T. 573.

Trade Mark:—

- (xii.) **C. A.**—*Trade Name—Infringement—Expired Patent.*—Defendant sold sewing machines in England manufactured by a German company, and described them in his circulars as being on the "Singer" system, with explanations showing that the machines were made in Germany according to expired patents of the plaintiff company: *Held* that plaintiffs were not entitled to an injunction.—*Singer Manufacturing Co. v. Loog*, 29 W.R. 699.

Trustee:—

- (xviii.) **Ch. Div. V. C. B.**—*Breach of Trust—Doubtful Question of Law—Acquiescence.*—a trustee under a will having on the advice of counsel

paid a sum of money to E., and the Court having held on the construction of the will five years afterwards (see *Will* lxxii., p. 142) that the money should have been paid to the residuary legatee; it was held that the latter was entitled to recover it from the trustee's estate, the amount to be recouped by E.—*Wilson v. Donald*, 44 L.T. 467.

- (xix.) **Ch. Div. K. J.**—*Covenant with Third Party—Obligation to Enforce—Devastavit.*—C. and P. were appointed trustees under a marriage settlement by which husband covenanted to pay six months after his death, £500 to be held on trusts for wife and children. At the same time they had notice of the existence of a subsequent separation deed whereby S. covenanted to pay £500 immediately in substitution for the £500 payable under the first deed. C. and P. were S.'s executors, and paid the interest on the £500 to the person entitled under the settlement, but never transferred the £500. The husband died, and shortly afterwards the whole of S.'s estate was lost: *Held* that C. and P. were entitled to enforce the covenant under the settlement against the husband's estate.—*Collins v. Rhodes*, 44 L.T. 414.

- (xx.) **Ch. Div. F. J.**—*Direction to carry on Business—Debts Incurred—Execution against Trust Property—Deposit of Lease.*—An executor, directed by his testator to carry on his business, did so and incurred debts, to pay off which he borrowed money from H., and deposited with him a lease forming part of the trust estate, but which the executor had renewed in his own name. H., having obtained judgment against the executor, seized goods which formed part of the trust estate under a *fi. fa.*: *Held* that H. had no claim against the trust property, and that his equity in respect of the leaseholds must be postponed to that of testator's estate.—*Pillgrem v. Pillgrem*, 29 W.R. 733.

Vendor and Purchaser:—

- (xv.) **C. A.**—*Covenant by Purchaser—Non-execution of Deed.*—D. agreed with S. in 1824 for the purchase of an estate, and that the purchase deed should contain a certain covenant by D. The deed was executed by S., but not by D., and D. took possession: *Held* that the execution by D. of the counterpart of the deed containing the covenant could not be presumed.—*Witham v. Vane*, 44 L.T. 718.
- (xvi.) **C. A.**—*Insurance by Vendor—Fire after Contract and before Completion.*—Decision of M. R. (see *Vendor and Purchaser*, vi., p. 39) affirmed.—*Rayner v. Preston*, 50 L.J. Ch. 472; 29 W.R. 547.
- (xvii.) **Ch. Div. K. J.**—*Statute of Frauds—Description of Property—Auction.*—At a sale by auction a memorandum was added to the conditions of sale and signed by auctioneer that the property, of which no description was given, was duly sold to plaintiff, and a receipt for deposit money, mentioning the amount of the purchase-money, was also then signed and given him. Posters describing the property had been published, but there were none in the room at the sale: *Held* no sufficient description of the thing sold to satisfy Statute of Frauds.—*Shardlow v. Cotterill*, 44 L.T. 549; 29 W.R. 737.

Voluntary Gift:—

- (ii.) **C. A.**—*Fiduciary Relation—Medical Man.*—The executors of G., a widow, brought an action to recover £800 from defendant, her medical man, alleged to have been lent by her to him. The jury found that the money was advanced as a gift without undue influence, that the relation of medical man and patient ceased in 1872, and that after that time G. intentionally abode by what she had done: *Held* that judgment was rightly entered for defendant.—*Mitchell v. Homfray*, 59 L.J. Ex. 460; 29 W.R. 558.

Will:—

- (lx.) **C. A.—Annuity—Continuing Charge.**—Testator directed his trustees to pay an annuity out of the rents and profits of a trust estate by half-yearly payments, and bequeathed the remainder of such rents and income to A. for life, remainder to children: *Held* that the annuity was not a continuing charge on the rents and profits.—*Wormald v. Museen*, L.R. 17 Ch. D. 167; 50 L.J. Ch. 482; 44 L.T. 409; 29 W.R. 753, 795.
- (lxi.) **Ch. Div. F. J.—Construction—Contingent—Legacy—Lapse.**—Testatrix gave residue to the children of the late J. and fourteen other persons. J. was dead at date of will, and never had a child: *Held* that the fourteen others took the whole residue.—*Spiller v. Madge*, 29 W.R. 782.
- (lxii.) **C. A.—Construction—Gift on Marriage with consent of Guardian.**—Testator appointed his wife to be guardian of his children during minority and bequeathed legacies to his daughter C. on her attaining twenty-one, or on her marriage with the consent of her guardian or guardians. After death of testator and wife, and while there was no guardian, C. married and died under twenty-one: *Held* that the legacies to C. failed.—*Re Brown's Trusts*, 50 L.J. Ch. 507; 44 L.T. 340; 757; 29 W.R. 604.
- (lxiii.) **Ch. Div. F. J.—Construction—Gift over on Marriage—Absolute Gift.**—Testator gave C. £3,000, but in event of his marrying K., he directed his executors to retain the £3,000 on trust for C. and K. and their children. Three months after testator's death C. married K: *Held* that the £3,000 must be invested in trust for C. and K. and their children.—*Money v. Money*, 44 L.T. 639; 29 W.R. 660.
- (lxiv.) **Ch. Div. F. J.—Construction—Gift to Class—Gift Over—Other or Others.**—*Held* that a gift over of shares given to a class of such of the class as died without having issue before their shares had been paid, to the other or others of the class, meant those of the class other than those dying without issue, and related to accrued as well as original shares.—*Chaston v. Seago*, 29 W.R. 778.
- (lxv.) **Ch. Div. F. J.—Construction—Legacy charged on Real Estate—Residuary Bequest.**—Testatrix, after a specific devise to C., and certain pecuniary legacies, bequeathed three legacies of £100 each with the proviso that if her estate would not produce those sums after the previous legacies were paid, then those sums were to abate, and she appointed C. residuary legatee: *Held* that the legacies were charged on residuary realty and personality; and that C. took the real estate not specifically devised.—*Farrant v. Carter*, 44 L.T. 603.
- (lxvi.) **Ch. Div. F. J.—Construction—Legacy in Satisfaction of Covenant—Mistake—Double Portions.**—Testator having covenanted on his daughter's marriage, that if he should die in her lifetime he would bequeath to the trustee of her settlement £5,000, to be held on the trusts thereof, and having survived his daughter, by a will made after her death gave £4,000 to the trustee to hold on the trusts of the settlement, the bequest being expressed to be made in pursuance of the covenant. He also gave £4,000 in trust for his daughter's children: *Held* that both gifts took effect.—*Dyke v. Dyke*, 44 L.T. 568.
- (lxvii.) **P. C.—Construction—Estate Tail—Born in my Lifetime.**—Devise to testator's six grandsons as tenants in common, in equal shares for life with remainders to their respective issue in tail male; with a proviso that, if any tenant in tail male should be born in testator's lifetime, he revoked the devise made to him and gave him a life estate only with

remainder to his issue in tail male. The eldest son of one grandson was born at date of will: *Held* that he took an estate tail.—*Gibbons v. Gibbons*, L.R. 6 App. 471.

- (lxviii.) **Ch. Div. F. J.**—*Construction—Period of Vesting*.—Gift of a fund to trustees on trust for C. for life after her death to pay and divide among her children on attaining twenty-one respectively, with a gift over to survivors in case any of them should happen to die before their shares became payable, without leaving issue; with a power of maintenance during minorities, and an ultimate trust on death of all children under twenty-one without leaving issue: *Held* that the shares of C.'s children became vested at twenty-one absolutely.—*Partridge v. Baylis*, 44 L.T. 737; 29 W.R. 820.
- (lix.) **Ch. Div. M. R.**—*Construction—Residuary Legatee*.—Testatrix gave all she was possessed of to A. for life, and then gave certain pecuniary legacies and appointed M. residuary legatee. At date of will she had no real estate, but she had real estate at date of her death: *Held* that M. was only entitled to the personalty.—*Re Methuen and Blore*, L.R. 16 Ch. D. 696; 50 L.J. Ch. 464; 44 L.T. 332; 29 W.R. 656.
- (lxx.) **Ch. Div. F. J.**—*Construction—Right to Reside in House*.—Testator directed that his wife might reside in his house, rent free, during her life. She lived in the house for some years and then let it: *Held* that she must hand over the rent to the trustees of the will.—*May v. May*, 44 L.T. 412.
- (lxxi.) **C. A.**—*Construction—Second Cousins*.—Decision of M. R. (see *Will* xxii., p. 43) affirmed.—*Bentham v. Wilson*, L.R. 17 Ch. D. 262.
- (lxxii.) **Ch. Div. V. C. B.**—*Construction—Specific Devise—Land Contracted to be Sold*.—Testator devised to E. the land taken by him in exchange from S. At date of will part of this land was under contract of sale, but the conveyance was not completed till after testator's death: *Held* that the purchase-money did not go to E.—*Wilson v. Donald*, 44 L.T. 467.
- (lxxiii.) **Ch. Div. V. C. H.**—*Construction—Stock in Trade*.—A barge-builder specifically bequeathed his business and stock in trade: *Held* that old barges, which he had taken in part payment for new ones, and subsequently let on hire, passed under the bequest.—*Richardson v. Pilliner*, 50 L.J. Ch. 488; 44 L.T. 404.
- (lxxiv.) **Q. B. Div.**—*Construction—Tenancy in Common*.—Testator gave property to J. together with M. during their lifetime, but if M. should marry she should be liable to lose her share immediately: *Held* that J. and M. took as tenants in common.—*Jones v. Jones*, 44 L.T. 642; 29 W.R. 786.
- (lxxv.) **Ch. Div. V. C. B.**—*Tenant for Life and Remainderman—Income—Apportionment*.—Testator gave a sum to trustees for his wife for life with remainders over, to be raised out of his estate and invested with her consent. She received interest on the sum up to a certain day, when it was invested in stock with five months' accrued dividends: *Held* that she was entitled to these dividends.—*Barker v. Perowne*, 44 L.T. 736; 29 W.R. 780.
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ADDENDA.

(Cases reported only in the *Law Times Reports* and *Weekly Reporter* for July 30th.)

Administration:—

- (xxvi.) **Ch. Div. F. J.**—*Executor—Retainer—Proceeds of Sale of Realty.*—A fund arising from the sale of a testator's real estate not charged with debts is not subject to the executor's right of retainer.—*Walters v. Walters*, 44 L.T. 769.

Bankruptcy:—

- (lxxxix.) **C. J. B.**—*Act of Bankruptcy.*—Where a bankruptcy petition has been presented within six months, and other proceedings have been regular, a person may be adjudged bankrupt on an act of bankruptcy committed more than twelve months previously.—*Ex parte Grepe, Re Grepe*, 29 W.R. 824.

Mortgage:—

- (xxx.) **Ch. Div. V. C. B.**—*Power of Sale—Conveyance by Executors.*—37 & 38 Vict., c. 78, s. 4.—The executors of a deceased mortgagee, who has contracted to sell under a power of sale, cannot convey under sec. 4 of Vendor and Purchaser Act, 1874.—*Re White's Mortgage*, 29 W.R. 820.

Practice:—

- (clxxvii.) **Ch. Div. F. J.**—*Reference—Objections to Report—Costs.*—Objections may be made to the report of an official referee, to whom questions in an action have been referred, on further consideration; but notice of the objections should be given. Where plaintiffs in an administration action had made charges against the trustees which had largely increased the costs of a reference in the action, and which proved unfounded; they were ordered to pay the costs of the action, except such costs as would have been occasioned by a common administration judgment.—*Sykes v. Brook*, 29 W.R. 821.
- (clxxviii.) **Q. B. Div.**—*Writ of Summons—Time.*—A writ of summons in an action does not date back to the earliest hour of the day on which it is issued.—*Clarke v. Bradlaugh*, 44 L.T. 779; 29 W.R. 822.

Ship:—

- (liii.) **C. A.**—*Foreign Judgment—Action in Rem.*—The Admiralty Div. cannot entertain a suit in rem on a foreign judgment in personam for damages arising out of a collision.—*The City of Mecca*, 44 L.T. 750.

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